ONTARIO SECURITIES COMMISSION

Volume 1, Issue 1

PERSPECTIVES

WINTER 1998

inside...

FEATURE

The "Virtual" National Securities Commission: Soon to be a Reality

A "virtual" national securities commission, based on mutual reliance among provincial commissions, is expected to be in place by January 1999. The new system will provide "one-stop shopping" for certain filings of prospectuses and Annual Information Forms, applications for discretionary relief, and applications for registration for advisers and members of self-regulatory organizations.

Mutual reliance means that participating regulators will rely primarily on the review and recommendations of another jurisdiction for certain filings made in more than one jurisdiction in Canada. While the principal jurisdiction will be responsible for issuing a decision document on behalf of all jurisdictions, each participating regulator will retain and exercise its statutory discretion with respect to all filings. (continued on page 11)

INDEX

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Mutual Fund Regulation: Progress on Many Fronts

Amid continued growth in the mutual fund industry, regulators are moving forward with a wide range of policy development and regulatory reform projects. In recent months there has been particular progress in three key areas:

- the creation of a self-regulatory organization (SRO) for mutual fund dealers;
- changes in the regulation of mutual fund sales practices; and
- the reformulation of mutual fund policies. (For background on the rule reformulation process, please see box.)

SRO For Mutual Fund Dealers

The current drive towards creating a mutual fund dealer SRO arose from the 1995 Stromberg report on "Regulatory Strategies for the Mid-'90s," and the recommendations of the Canadian Securities Administrators' (CSA) Investment Funds Implementation Group, which were approved in the Spring of 1997.

FAST FACTS

For the second quarter of 1997, 287 prospectuses were filed. This represents a 33% increase over the same period for 1996.

The Investment Dealers Association (IDA) and the Investment Funds Institute of Canada (IFIC) have agreed in principle to set up an SRO, which would be run by a tripartite board with representatives from the IDA, IFIC and the public.

To ensure that the necessary rule-making process moves along at the same pace as the implementation of the SRO, the Ontario Securities Commission (OSC), recently published for comment Proposed Rule 31-506, which would require all mutual fund dealers to belong to an SRO recognized by the Commission. This would also require all mutual fund dealers to contribute to a contingency fund.

The OSC also recently published for comment Proposed Rule 31-507, which would require all securities dealers to be members of a recognized SRO or stock exchange. Proposed Rules 31-506 and 31-507 would have a similar effect on mutual fund dealers and securities dealers as National Policy Statement 49 did on "national dealers."

For more information, please call **Rebecca Cowdery,** Special Counsel, (416) 593-8129, or **Tanis MacLaren,** Associate General Counsel, (416) 593-8259.

20 OSCB Oct. 3, 1997

Regulation of Mutual Fund Sales Practices

Following publication of the Stromberg report and a subsequent draft code released by IFIC, the OSC released a proposed rule in August 1996 on the controversial issue of mutual fund sales practices.

During the comment period the CSA decided to make the proposed OSC rule national in scope. In July 1997 the CSA released the national version (National Instrument 81-105), which incorporated some changes based on comments received. The comment period for the National Instrument ended September 30, 1997, with more than 20 submissions received.

Background to Rule Reformulation

For almost 30 years, the Canadian Securities Administrators have used policy statements and other instruments as regulatory tools to respond in a flexible way to the practical constraints of attempting to amend securities laws. In March 1993, the Commission adopted Policy Statement 1.10, which related to business practices for securities dealers engaged in the marketing and sale of "penny stocks." Certain securities dealers began legal action challenging the authority of the Commission to adopt the Policy Statement. In what became known as the "Ainsley decision," the Court concluded that the OSC did not have sufficient statutory authority to issue what in the Court's view amounted to a binding rule.

At the request of the Commission, in 1993 the Ministry of Finance appointed a joint Commission and Ministry Task Force to consider the appropriate legislative response. In its final report issued in June 1994, the Task Force recommended that the OSC be given rule-making authority, subject to appropriate accountability mechanisms. On January 1, 1995, amendments to the Ontario Securities Act (the Securities Amendment Act, 1995) granted the Commission the authority to make rules having the effect of regulations for a range of specified matters.

As a result of this binding rule-making authority, the Commission undertook to reformulate approximately 146 existing instruments. This reformulation will have the effect of bringing the instruments into conformity with the requirements of the Act. At the same time, they are being re-written in language that will make them more effective and accessible.

The proposed National Instrument prohibits certain sales practices and compensation arrangements that the CSA believes undermine, compromise or conflict with the fundamental obligations owed by industry participants to investors. The practices that would be prohibited include:

- sales contests to qualify for additional bonus commission payments;
- all expenses paid fund company-sponsored conferences with limited education purposes, where attendance depends on achieving certain sales levels;
- unlimited marketing allowances by fund companies to pay for dealers' business expenses;
- and payment of commissions contingent on the dealer or representative achieving set asset or sales levels.

The CSA is now reviewing comments and expects to have a final National Instrument released in early 1998. The National Instrument will be effective upon receipt of certain ministerial approvals. If approved, it is expected to be effective Spring, 1998.

For more information, please call **Rebecca Cowdery,** Special Counsel, Market Operations, at (416) 593-8129.

20 OSCB July 25, 1997

Mutual Fund Reformulation Project

The mutual fund rule reformulation project began in the Summer of 1995. It involves the reformulation of a number of regulatory instruments.

The CSA released proposed replacement rules for National Policy 39 regarding Mutual Funds and OSC Policy 11.4 regarding Commodity Pools in June 1997. The OSC finalized a replacement instrument for OSC Policy 11.1 regarding Mutual Fund Trustees and revoked OSC Policy 11.5 regarding Real Estate Mutual Funds early in 1997.

A rule granting registration and prospectus relief for mutual fund reinvestment plans became effective in October 1997, replacing two former blanket rulings of the OSC.

The CSA is also working on a national instrument to replace NP 36, the Mutual Fund Simplified Prospectus system, which will be based on a prospectus disclosure proposal released for comment by the CSA in January 1997.

For more information on the status of these projects, please call **Rebecca Cowdery,** Special Counsel, Market Operations, at (416) 593-8129.

Reformulation Workshops for Securities Lawyers

A group of lawyers concerned with continuing education for securities lawyers is working with the Commission to develop a series of workshops to bring securities law practitioners up to speed on the reformulated rules.

A steering group led by securities lawyers from a number of Toronto firms will be working with Randee Pavalow, Policy Coordinator/Advisor, and Imants Abols, Counsel, Corporate Relations Branch, to organize these sessions. The workshops are expected to take place this Spring.

Details will be provided as the plans evolve. For more information on these workshops, please call **Imants Abols**, (416) 593-8061.

Exempt Distributions: Request for Comments

On October 17, 1997, the Ontario Securities Commission (OSC) issued a request for comments on a Proposed Rule, Policy and Forms (Rule 45-501) regarding **Exempt Distributions**. The aim of the reformulation project was to clarify existing requirements, ensure consistency, and provide additional exemptive relief in certain situations.

In its request for comments, the Commission noted that the proposed rule and related instruments only partially address the administrative burdens, expense and complexity of the closed system. The OSC anticipates that the Canadian Securities Administrators' future consideration of the appropriateness of an integrated disclosure model in Canada will require a review of whether the existing closed system framework should be altered or eliminated.

The deadline for submissions was January 15, 1998.

For more information, please call **Susan Wolburgh Jenah,** Manager, Market Operations at (416) 593-8245 or **Iva Vranic,** Legal Counsel, Market Operations at (416) 593-8115.

20 OSCB Oct. 17, 1997

Mergers and Acquisitions: Update on Applicable Rules and Policies and the Zimmerman Report

OSC Policy 9.1 (Disclosure and Valuation and Minority Approval Requirements for Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions)

A draft of the Proposed Rule and Companion Policy to replace OSC Policy 9.1 was published for comment in May 1996 (19 OSCB 2981). Staff is currently reviewing the Proposed Rule and the comments and it is anticipated that a revised draft will be published in March 1998.

OSC Policy 9.3 (Take Over Bids - Miscellaneous Guidelines)

A draft of the Proposed Rule to replace OSC Policy 9.3 was published for comment in October 1995 (18 OSCB 4916). Section 1 of Part A and all of Part B of the Policy will be deleted in the Rule as they are covered by section 94 of the Act. Since the publication of the Proposed Rule, staff is considering whether some of its provisions should be integrated into other reformulated instruments.

National Policy 38 (Take Over Bids - Defensive Tactics)

National Policy 62-202 *Take-over Bids - Defensive Tactics,* which replaces National Policy 38, came into force on August 4, 1997. Policy 62-202 does not introduce any substantive changes from National Policy 38.

Zimmerman Report

Each of the Canadian securities regulatory authorities has agreed to adopt the recommendations made in the Report of the Committee to Review Take-Over Bid Time Limits published in August 1996 (19 OSCB 4469) and to coordinate their implementation.

. The recommendations will be adopted by various means in the different provinces (including by legislation, rules and policies), with an initial target date of Spring 1998. It is proposed that the recommendations be implemented in Ontario through legislative amendments to the Act.

For more information, please call **Cathy Singer,** General Counsel, (416) 593-8082.

CANADIAN SECURITIES ADMINISTRATORS HIGHLIGHTS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada. The principal current initiative of the CSA is the establishment of the mutual reliance system. For more on this project, please see our ***Feature: The Virtual National Commission*** *on the cover page.*

Proposal to Introduce Statutory Civil Liability for Continuous Disclosure in Canada

The Canadian Securities Administrators (CSA) anticipates that proposed legislation on civil liability for continuous disclosure will be on the agenda of provincial governments this Spring.

The CSA is in the process of discussing a proposal for a legislative amendment with the respective governments across Canada. The legislation is intended to provide for a statutory right of action to sue issuers and other responsible parties for misrepresentations in continuous disclosure documents and other statements relating to the issuer or its securities.

"The legislation is intended to provide for a statutory right of action to sue"

A CSA Task Force was formed following the release of a report by the Toronto Stock Exchange Committee on Corporate Disclosure, commonly known as the Allen Committee report. Two years in the making, the report recommended the creation of a limited, statutory, civil liability regime in Canada for continuous disclosure.

For more information, please call **Susan Wolburgh Jenah,** Manager, Market Operations, at (416) 593-8245.

20 OSCB Oct. 17, 1997

Technology Review Proposes New Systems for Mutual Reliance, Registration, Insider Reporting

Early in 1997, the Information Technology (IT) Committee of the Canadian Securities Administrators (CSA) launched a project to review regulators' technology systems and development plans across the country. The goals of the project are to encourage greater harmonization of systems, information sharing, and joint development.

FAST FACTS

Since it was introduced in January of 1997, SEDAR, the System for Electronic Document Analysis and Retrieval, has processed over 60,000 filings and staff has responded to over 5,400 SEDAR related queries from filers, the staff of the OSC and other Commissions.

The Committee has developed a number of proposals for shared initiatives. These include:

- a shared private network with workgroup software to link all Commissions and facilitate the exchange of information;
- systems to enable mutual reliance through shared tracking and precedents information for prospectuses and applications; and
- joint CSA ventures that would result in SEDAR-type online registration systems and insider reporting systems.

Implementation plans for each project are now being developed and will be presented to the CSA Steering Committee for approval. If approved, work on the projects would begin immediately. The first priority would be putting a shared network in place, and then developing the new systems.

For more information, please call **Robert Byrnes,** Acting Deputy Director of Information Technology, (416) 593-8198.

Canadian Securities Administrators and Insurance Regulators to Develop Process for Cooperation

With the growing convergence of the insurance and securities businesses, cooperation between regulators has become a focus of attention for both industries.

Following the Canadian Securities Administrators' (CSA) Fall meeting in Regina, representatives of the CSA and the Canadian Council of Insurance Regulators (CCIR) announced that they will develop a process to discuss evolving issues of common interest in the regulation of the securities and insurance industries. Discussions are now underway regarding an information sharing agreement between the CSA and the CCIR.

For more information, please call **Tanis MacLaren,** Associate General Counsel, at (416) 593-8259.

20 OSCB Oct. 17, 1997

Conflicts of Interest in the Securities Industry: CSA Encourages Quick SRO Action on Hagg Committee Report

In a news release following its Fall 1997 meeting, the Canadian Securities Administrators (CSA) called the recommendations of the *Joint Securities Industry Committee on Conflicts of Interest (the Hagg Report)* "an important step in the right direction for addressing the conflicts of interest that may arise where dealers and their employees participate directly in financing emerging companies."

"Conflicts may occur when a firm or its employees play multiple roles as investors, promoters and underwriters."

The Hagg Committee was set up by the IDA and the Canadian stock exchanges (the Self-Regulatory Organizations - SROs) in September 1996 to look at potential conflicts that may occur when brokerage firm employees personally invest in emerging companies. In particular, conflicts may occur when a firm or its employees play multiple roles as investors, promoters and underwriters.

The report contains numerous recommendations, including that a brokerage firm disclose when employees and the firm together hold more than 10 percent of a company's stock.

In response to the Committee's interim report, the CSA made a submission to the Committee in which it raised a number of substantive questions. Following the release of the final report, the CSA noted that the report did not deal with all of its concerns. However, the CSA is encouraging the SROs to act quickly to implement the Committee's recommendations.

For more information, please call **Tanis MacLaren,** Associate General Counsel, at (416) 593-8259.

ENFORCEMENT

Recent Enforcement Proceedings

The following are summaries of recent enforcement proceedings. For more information, please call Larry Waite, Director of Enforcement, (416) 593-8156.

Altamira Management Limited. ***Trading may have had the effect of misleading market observers and the public. (Public Interest (s.127))***

On September 15, 1997 the OSC announced a Settlement Agreement relating to trading by accounts managed by Altamira Management Limited in the shares of Dorset Exploration Ltd., a Toronto Stock Exchange listed corporation, between April 1, 1993 and October 1, 1994. As part of the settlement, Commission staff accepted that it was not Altamira's intention to mislead or manipulate the market for Dorset shares. However, staff noted a number of concerns, and considered that Altamira's trading in the Dorset shares may have had the effect of misleading market observers and the public as to the closing value of the Dorset shares on many of the trading days during the period.

As part of its position in the settlement, Altamira stated that its trading in Dorset shares was for the benefit of clients and that its trading activity in Dorset shares, while substantial, had no material effect on the price of Dorset shares.

Altamira consented to a review of its trading practices and procedures by the Altamira Advisory Council, an independent council established to monitor the interests of Altamira's unitholders. In addition, Altamira agreed to a reprimand by the Commission and to an order requiring it to implement certain changes to its trading practices. Altamira also agreed to pay $75,000 to the Government of Ontario to defray the cost of the Commission's review.

Marchment & MacKay Limited. ***Divisional Court confirms jurisdiction of the Ontario Securities Commission. (Public Interest (s.127(1)) & Calls to residences for purposes of trading (s.37(1))***

The Commission announced on October 6, 1997 that the Court of Appeal for Ontario dismissed three motions brought by Marchment & MacKay Limited, its officers and certain of its salespeople for leave to appeal from decisions of the Divisional Court released in the Spring of 1997. These Divisional Court decisions affirmed the jurisdiction of the OSC to proceed with a pending hearing relating to the sales practices of Marchment & MacKay Limited and held that there was no reasonable apprehension that members of the Commission who had heard and determined an earlier sales practice hearing relating to E.A. Manning Limited were biased against the securities dealer. It was held that the rule making power granted to the Commission under Section 143 should not be interpreted as imposing on the Commission a mandatory requirement to make rules, or as restricting the scope of the Commission's public interest jurisdiction under s.127 to regulate trading.

Nucap Investments Inc. and William A. Dressing. ***(Public Interest (s.127(1)) & Selling funds after suspension (s.25(1))***

On October 28, 1997, the Ontario Securities Commission approved a Settlement Agreement between staff of the Commission, Nucap Investments Inc. and William A. Dressing. Dressing was the president, sole director and a trading officer of Nucap.

Nucap and Dressing agreed that: (1) Nucap continued to process mutual fund sales after Nucap's registration as a mutual fund dealer was suspended on April 25, 1996; (2) neither Nucap nor Dressing advised any of Nucap's eight salespersons after Nucap was notified of its suspension; (3) Nucap processed approximately $1.5 million in mutual fund sales while not registered; (4) the conduct of Nucap and Dressing was contrary to section 25 of the Securities Act and contrary to the public interest; and (5) Nucap and Dressing failed to deal fairly, honestly and in good faith with Nucap's salespersons and clients.

Under the terms of the Settlement Agreement, Nucap and Dressing agreed to an order terminating Nucap's registration as a mutual fund dealer and Dressing's registration as a trading officer of Nucap.

Ralph Schatzmair and Emmanuel Borromeo. ***Acquisition of units on terms not disclosed in prospectus. (Public Interest (s.127))***

On October 30, 1997, the Ontario Securities Commission approved Settlement Agreements between staff of the Commission and Ralph Schatzmair and Emmanuel Borromeo. Both Schatzmair and Borromeo were previously employed by McConnell and Company Limited ("MCL") at a time when MCL was the principal agent in a public offering of units of the Ravencrest Condominium Hotel Limited Partnership ("RCHLP"). Both acquired units in the partnership. Schatzmair also sold units under the offering to clients.

Both Schatzmair and Borromeo agreed that in connection with their involvement in the RCHLP, their conduct was contrary to the public interest in that as a salesperson of MCL they ought to have known that they were acquiring units of the RCHLP on terms which were not disclosed in the prospectus and which provided them with an advantage that was not afforded to all persons who purchased units in the RCHLP.

Under the terms of the Settlement Agreement with Schatzmair, he agreed to an order suspending his registration for a period of six months commencing November 8, 1997. He also agreed to make a voluntary contribution to the Canadian Investor Protection Fund in the amount of $7,500.

Under the terms of the Settlement Agreement with Borromeo, he agreed to an order suspending his registration for a period of three months commencing November 8, 1997. He also agreed to make a voluntary contribution to the Canadian Investor Protection Fund in the amount of $5,000.

Veronika Hirsch and Sameh Magid. ***False statements in regulatory filings. (Public Interest (s.127))***

On November 5, 1997, the OSC approved Settlement Agreements with Veronika Hirsch and Sameh Magid. The Settlement Agreements relate to conduct engaged in by Hirsch and Magid in connection with the purchase by Hirsch of special warrants issued under a private placement which was qualified for offering in British Columbia. Magid, a registrant in British Columbia and Ontario, had brought the investment opportunity to the attention of Hirsch. The private placement was not qualified for offering in Ontario. Both Hirsch and Magid acknowledge that they did not take appropriate steps to ensure that the private placement had been qualified for issue in Ontario.

At the time of the transaction Hirsch was a resident of Ontario. The documents filed in British Columbia in connection with the private placement disclosed Hirsch as being a resident of British Columbia, the address used being the residential address of Magid. This was a false statement to the knowledge of Hirsch and Magid as acknowledged in the Settlement Agreement.

Under the terms of the Settlement Agreements, Hirsch and Magid have acknowledged that their conduct was contrary to the public interest. Both were reprimanded by order of the Commission. In addition Hirsch agreed to make a voluntary contribution to the B.C. Securities Commission Investors' Education Fund in the amount of $99,573, the amount equivalent to the net profits after tax she realized on the sale of the securities acquired through her participation in the private placement.

Wayne Stephenson. ***Misrepresentation. (Public Interest (s.127))***

On November 6, 1997, the OSC approved a Settlement Agreement with Wayne Stephenson. Stephenson agreed that his conduct was contrary to the public interest in that he distributed to clients a copy of a book on financial planning which misrepresented his role as the sole co-author along with Dean Albrecht, a financial marketing consultant who resides in Florida. Under the terms of the Settlement Agreement, Stephenson's registration was suspended for fifteen days commencing December 1, 1997.

Gordon Badger. ***Misrepresentation in prospectus filings; non-qualified distribution out of a control block. (Public Interest s.127(1))***
On November 13, 1997, the OSC announced it had approved a Settlement Agreement with Gordon Badger. The Agreement relates to conduct that Badger engaged in as a director VRD Entertainment Limited. Badger agreed that he signed a certificate contained in the Preliminary Prospectus filed with the Commission which contained a misrepresentation regarding the capital of VRD. As a result, the Preliminary Prospectus did not contain full, true and plain disclosure of all material facts relating to the securities issued.

Furthermore, Badger knowingly participated in an offer by James Hastie, a long-standing business acquaintance, of his VRD shares in February 1995. This distribution was unlawful because no Form 23 had been filed with the Commission to permit a distribution out of a control block or, alternatively, because no prospectus had been filed to qualify a distribution out of a control block.

It was ordered that any exemptions in Ontario securities law do not apply to Badger for three years until July 16, 2000.

Canadian 88 Energy Corp., West Central Capital Corporation, Gregory S. Noval and David R. DiPaolo. ***Trading where undisclosed change and informing another person of an undisclosed change (s.76) (Public Interest (s.127))***
The Ontario and Alberta Securities Commissions approved the Settlement Agreement dated October 9, 1997 relating to the purchases and sales of common shares of Morrison Petroleums Ltd. by West Central Capital Corporation. The transactions at issue occurred prior to the announcement by Canadian 88 Energy Corp. on January 13, 1997 of its intention to make a formal take-over bid for all of the issued and outstanding common shares of Morrison.

Canadian 88 agreed to a reprimand. Greg Noval agreed to a one year trading ban and David DiPaolo and West Central each agreed to a six month trading ban. The Respondents also agreed to pay $200,000 to the Commissions in reimbursement of costs.

Under the terms of the Settlement Agreement, the actions of the Respondents in connection with the purchases and sales of Morrison common shares by West Central pursuant to its agreement with Canadian 88 were contrary to the public interest.

In the view of the Commissions' staff, the acquisition of a toehold position in a target company by a potential bidder, through a third party acting other than as a pure conduit, is contrary to the public interest.

Current Enforcement Projects

Securities Enforcement Review Committee (SERC)
SERC has been established in recognition of the need to better coordinate the use of available resources and expertise dedicated to the investigation and prosecution of securities offences. SERC is composed of senior representatives of the Ministry of the Attorney General, Metropolitan Toronto Police, The Toronto Stock Exchange (TSE), the Royal Canadian Mounted Police (RCMP), the Ontario Provincial Police (OPP), the Investment Dealers Association of Canada (IDA), the Canadian Investor Protection Fund (CIPF), as well as the OSC. The Committee meets monthly. One active SERC joint investigation is underway with participation from the RCMP (Market Group), OPP (Anti-Rackets) and the OSC (Enforcement).

Joint Agency Intelligence Liaison Committee (JAIL)
The OSC, Canadian Dealing Network (CDN), TSE, OPP, RCMP and Metropolitan Toronto Police meet monthly to share information, identify and discuss intelligence related issues. This committee was established as a sub-committee of SERC.

Market Integrity Computer Analysis System (MICA)
The aim of this project is to develop a more comprehensive computer program which will enable the electronic reconstruction of trades on Canadian stock exchanges and the over-the-counter market. This analysis tool will enhance stock market manipulation and insider/tippee trading investigations and will allow for the analysis of multiple securities on multiple exchanges. OSC staff are heavily involved in testing the system. It is expected that the system will be fully operational in early 1998.

ONTARIO SECURITIES COMMISSION COMPLIANCE UPDATE

Actions and initiatives to better ensure compliance with the Securities Act.

Review of Canadian Dealing Network Companies' Financial Statements Reveals Non-Compliance

A recent Ontario Securities Commission report criticizing the quality of the financial statements of companies trading over the counter has been distributed to all Canadian Dealing Network (CDN) companies.

The OSC's 1996/97 Canadian Dealing Network Continuous Disclosure Review, released on October 20, 1997, found numerous instances of non-compliance with generally accepted accounting principles. As well, staff found significant deficiencies in other continuous disclosure documents, such as press releases and material change reports. In some cases, material information was not disclosed to the market on a timely basis or at all. In general, the OSC noted a tendency to overemphasize favorable news, under-emphasize unfavorable news, use overly promotional language, and announce objectives which the company lacked resources to carry out.

In conducting the review, the OSC was aiming to open a dialogue with CDN firms and to educate them on complying with securities requirements. Very few of the noted deficiencies resulted in enforcement action. However, the Commis-

sion has noted that when future reviews are conducted, it will enforce the Securities Act through all means available.

OSC staff will continue to work with the CDN to ensure that CDN companies are aware of their responsibilities as public companies and of the Commission's intention to devote greater resources to continuous disclosure regulation in the future. In the recent legislative amendments, the OSC received the express authority to regulate the activities of the CDN. (*See Red Tape Reduction Act Receives Royal Assent,* page 9).

For a copy of the report, please call Corporate Relations at (416) 593-8117. For more information on the Review and report, please call **Kathy Soden,** Manager, Market Operations, at (416) 593-8149.

20 OSCB Oct. 17, 1997

Ontario Securities Commission Reports Reveal Mutual Fund Dealer and Non-SRO Member Compliance Issues

Two recent reports by Ontario Securities Commission (OSC) staff have identified deficiencies in compliance by non-SRO member registrants with the requirements of the Securities Act.

Regulatory Filings of Non-SRO Member Registrants

The first report, released on September 26, 1997, was based on a review of annual and interim filings by non-SRO members such as mutual fund dealers, scholarship plan dealers, securities dealers, underwriters and investment counsel/portfolio managers.

Common areas of deficiency included subordinated debt, proper completion of the audited Statement "C" of Form 9, calculation of working capital and minimum required capital based on adjusted liabilities, proper classification of assets and liabilities as current or long term and insurance requirements.

Mutual Fund Compliance Review

The second report, completed in October 1997, was based on compliance examinations of 23 registered mutual fund dealers. The examinations aimed to ensure that the operations of registrants were in compliance with Ontario Securities law. In addition, the Compliance Team examined internal controls and reported to the registrants any weaknesses that could increase the risk of non-compliance.

Among mutual fund dealers, typical problem areas included trust accounts (e.g. accounts not clearly designated as a trust account with the financial institution); supervision (e.g. lack of proper supervision of sales representatives' activities); Know Your Client (e.g. New Client Application Forms without sufficient and appropriate know your client information); and Books and Records (e.g. not maintaining daily trade blotters and records itemizing client transactions).

For more information, please call **Toni Ferrari**, Manager, Compliance, (416) 593-3692.

20 OSCB Sept. 26, 1997

OSC REPORTS

An inside look at Commission projects that will have an impact on the investment community.

Mining Standards Task Force

The Mining Standards Task Force created in the wake of the Bre-X controversy is expected to issue its report in the first half of 1998.

The Ontario Securities Commission (OSC) and The Toronto Stock Exchange (TSE) formed the Task Force to consider whether regulations relating to mining and exploration companies should be changed. In particular, the Task Force is examining whether there should be requirements for:

- the use of approved assay laboratories and assay methods by mining and mineral exploration companies
- criteria for approval of assay labs and methods
- procedures to be followed to improve security of samples to minimize the possibility of tampering
- periodic independent reporting of reserves, and review and approval of reserve reports
- standards for disclosing assay and drill results and procedures so that all information needed to fully understand and analyse results is clear
- standards for defining reserve types and reserve calculations.

The Task Force is also considering whether additional information should be provided in the prospectuses and continuous disclosure documents of mining and exploration companies.

On December 12, 1997, the TSE announced the introduction of a new listing application form requiring additional information for mining companies. The information requirements cover the status of the company's land tenure, drilling methods, sampling procedures, assay labs and analytical methods. The Exchange noted that further changes may be introduced, subject to the recommendations of the Mining Standards Task Force.

The Task Force includes representatives from the OSC, TSE and private industry. Micon International Ltd., an independent mineral consulting firm, is serving as external consultant to the Task Force to address technical issues.

For more information, please call **Morley P. Carscallen,** Vice-Chair, at (416) 593-8081 or **Kathy Soden,** Manager, Market Operations, at (416) 593-8149.

20 OSCB Aug. 8, 1997

Surf to the OSC website: www.osc.gov.on.ca

Members of the investment community will soon be able to access news releases, reports, and updates on rule-making and enforcement on the Ontario Securities Commission's website.

The website will make it easier for investors, industry professionals and reporting issuers to find a variety of OSC information. The site will include:

- updates on rule-making and Commission enforcement proceedings
- basic information for investors
- news releases
- OSC publications
- remarks by OSC executives and staff
- a Continuous Disclosure Checklist for reporting issuers, listing the documents that issuers must submit and the timeframes for submission
- a list of OSC contacts by subject or issue
- employment opportunities
- Frequently Asked Questions

The site will also include links to related websites. The OSC website address will be **www.osc.gov.on.ca**.

The OSC expects that the website will continue to evolve in order to provide additional information and resources for market participants and investors.

For more information, please call **Monica Zeller**, Communications Officer, at (416) 593-8120.

Investor Education Week: Coming Soon Across North America

The Ontario Securities Commission (OSC) and other members of the Council of Securities Regulators of the Americas (COSRA) will participate in Investor Education Week in March 1998. The aim of this program is to heighten public awareness of the capital markets, the role of regulators and the information resources available to investors.

Working with other regulators and industry participants, the OSC has begun planning a number of events for the week of March 30 - April 3, 1998. These include:

1) Town Hall Meetings. Building on the OSC's success in staging Town Hall Meetings, the Commission is planning a new series. The meetings may be held in concert with seminars on topics of interest to investors. The Commission's intention is to use technology to link communities of interest.

2) Industry Partnerships. The OSC has begun meeting with SROs, industry members, and interest groups to explore events in which the Commission could participate jointly. Stay tuned!

3) Investor Information Materials. Working with the Canadian Securities Administrators' Committee on Investor Education, the OSC will produce and promote an investor education kit, which will include the brochures: *Planning Your Financial Future Getting Started; Choosing Your Financial Advisors; The Prospectus; and Investing and the Internet.*

4) Risk Tolerance. Recognizing the tremendous potential of interactive learning tools, the Commission is currently considering the development of a risk tolerance simulation. The premise is to help investors determine their own risk profile, and then to fine-tune certain assumptions by simulating various market conditions. Broadly, the product will also consider the impact of fees and taxes on investors' financial goals.

For more information, please call **Nancy Stow**, Project Coordinator, (416) 593-8297.

Bond Market Transparency Appeal Hearing Canceled

Following the decision by the Investment Dealers Association of Canada (IDA) not to proceed with a proposed regulation to improve transparency in the Canadian bond markets, the Ontario Securities Commission (OSC) is reviewing alternative ways to reach this goal.

In the early 1990s, the Commission began to pursue initiatives to enhance transparency. The IDA and the Inter-Dealer Bond Brokers Association (IDBA) proposed an IDA regulation which permitted IDA members to deal only with those inter-dealer bond brokers that provided market information to a recognized market transparency organization (RMTO). CanPX, an organization owned by the IDA and IDBA, was identified in the regulation as an RMTO.

"The OSC remains committed to the goal of improved transparency of the Canadian bond markets."

In May 1996, the OSC approved the regulation on condition that other organizations could apply for recognition as an RMTO. In August 1996, Reuters Information Services (Canada) Limited applied to the IDA for recognition as an RMTO. The IDA Board decided in January 1997 to deny Reuter's application. Reuters subsequently requested that the Commission review the IDA decision.

In November 1997, the IDA informed the Commission that it does not currently intend to proceed with the implementation of the regulation or with the creation of CanPX. The appeal hearing therefore has been canceled.

The OSC remains committed to the goal of improved transparency of the Canadian bond markets. It is currently considering alternatives to achieve that objective.

For more information, please call **Randee Pavalow,** Policy Coordinator, (416) 593-8257.

20 OSCB Nov. 21, 1997

OSC Proposes On-Line Licensing System To Speed Registration Process

The Ontario Securities Commission (OSC) is considering the development of an on-line licensing system, either on its own or as part of a broader Canadian Securities Administrators (CSA) initiative.

"The Commission estimates that this system would eliminate up to 80 percent of staff administrative work on registrations."

Currently the Commission processes more than 25,000 licensing applications a year from prospective non-SRO salespeople and other market participants. A computerized system would allow applicants to fill out a form on their personal computer and electronically deliver it to the OSC. The Commission estimates that this system would eliminate up to 80 percent of staff administrative work on registrations.

For example, the electronic form would automatically prompt applicants to provide all necessary information, thus reducing the time that staff spends addressing deficiencies. In addition, staff would no longer need to type information into the system. As a result, the OSC expects the registration process would be significantly shortened.

The OSC had originally proposed developing an on-line system on its own. However, technical consultants hired by the CSA are currently reviewing a broad spectrum of technology issues (see Technology Review, page 3). Depending on the study's recommendations, this initiative may become national in scope.

For more information, please call **Lorie Milone,** Manager, Registrations, (416) 593-8124.

FAST FACTS

During the second quarter of 1997, Registration processed 5,164 applications. This represented a 2% increase over the previous quarter

Red Tape Reduction Act Receives Royal Assent

Ontario's Red Tape Reduction Act (Ministry of Finance) received Royal Assent in October 1997, changing or eliminating a broad spectrum of provisions in various statutes to reduce the regulatory burden on the public.

The Act is an initiative of the government's Red Tape Review Commission, created to eliminate or amend existing legislation that imposed an inappropriate burden on the public. The Act amends more than 40 statutes and completely repeals nine.

The key changes affecting the securities industry include:

- giving the OSC the power to regulate the activities of the Canadian Dealing Network and giving the TSE the explicit authority to run CDN;
- enabling the OSC to amend regulations where necessary for the effective implementation of a rule; and
- expanding a number of prospectus and registration exemptions contained in the Securities Act. For example, fully registered dealers and the subsidiaries of financial institutions are now automatically treated as exempt purchasers.

For more information, please call **Tanis MacLaren,** Associate General Counsel, (416) 593-8259.

20 OSCB Oct. 31, 1997

OSC To Host NETS Forum in April; Invites Presentations from Interested Parties

The Ontario Securities Commission (OSC) in concert with other CSA members, will hold a public meeting in April, 1998 on non-SRO sponsored electronic trading systems (NETS). The forum is part of the Commission's review of NETS and market fragmentation in order to develop an appropriate regulatory framework for the operation of NETS.

Electronic trading systems automate all or part of the traditional trading process. For example, they can automate order handling within a brokerage firm, facilitate order routing from a brokerage firm to a stock exchange or take the place of a stock exchange trading floor.

The meeting will allow interested parties to participate in discussions on the key issues surrounding NETS, including:

- the causes and implications of market fragmentation
- the basis on which NETS should be permitted to operate in the Canadian securities markets
- proposals for new regulations and the role of the Commission.

Presentations, limited to one-half hour, may be made by counsel, experts and employees of market participants. Only Commissioners will be allowed to question those who give presentations. However, others may provide contrary arguments as rebuttal.

For more information, please call **Randee Pavalow,** Policy Coordinator, (416) 593-8257.

20 OSCB June 13, 1997

'Dialogue with the OSC'

Following are excerpts from the remarks of John A. Geller, OSC Chair, and Brenda Eprile, Executive Director, at "Dialogue with the OSC," a forum held in Toronto on October 20, 1997. For complete copies of their remarks, please call Rowena McDougall at (416) 593-8117.

CURRENT REGULATORY DEVELOPMENTS
John A. Geller, Chair

In his remarks, Mr. Geller reviewed recent regulatory developments and outlined directions for the future. The following excerpt focuses on the issue of self-funding.

...Perhaps the most significant recent development is the enactment of Part VII of Bill 129, which reconstituted the Ontario Securities Commission as a Crown corporation, governed by its Board of Directors which consists of the Commissioners of the Commission, and self-funded through the fees which it charges.

"Over the same three or four year period, the fees charged by the Commission will be reduced to roughly match its expenditure requirements."

I don't have to tell you that, in recent years, the Commission has been severely constrained in its expenditures and has been unable to hire and retain all of the experienced staff which it requires in order to perform the functions with which it is charged. In addition to the staffing problem, the fiscal restraints have prevented the Commission from keeping pace with technology developments, and this has proved to be a serious inhibition...

...Over a three or four year period, the budget of the Commission will be substantially increased, and a reserve fund will be built up to provide for revenue swings and exceptional enforcement expenditures. But the total amount of expenditures will still be significantly lower than the amount of fees currently collected by the Commission. Over the same three or four year period, the fees charged by the Commission will be reduced to roughly match its expenditure requirements. We will be working with some of the other self-funded Commissions to try to create a nationally consistent approach to fees.

20 OSCB Nov. 14, 1997

WHAT IS THE OSC DOING ABOUT INVESTOR PROTECTION?
Brenda Eprile, Executive Director

In her remarks, Ms. Eprile looked at some recent OSC initiatives. In this excerpt, she discussses the role of informed investors.

...Investors need to play a greater part in the oversight process for the securities industry. To date, investor complaints have been an invaluable source of leads for enforcement investigations, but we need to see more involvement of investors in partnership with regulators. Yes, investors are recipients of the regulations carried out by government regulators and SROs, but they must also play a role in investor protection by informing regulators through the complaint process, participating in the development of our Statement of Priorities, commenting on rule changes being proposed and being informed and actively engaged in their own responsibility as investors to be educated and inquiring.

"We need to see more involvement of investors in partnership with regulators."

We are listening to what the small shareholder has to say about the problems with our present system. This year we have begun a series of lunch-time educational sessions for staff where we invite one of our constituents to give us their perspective on current issues. Recently, the well known shareholder activist, Yves Michaud joined us to talk about the concerns of minority shareholders in Canada.

Smaller investors becoming more informed and better educated creates its own dynamic of an increasing expectation to have more influence in the way in which investors are treated in the markets. The effect is a pragmatic rather than purist approach to engaging investors in their own protection. The emerging phenomena of thoughtful and enlightened shareholder activists is indeed a welcome development, and should be encouraged.

20 OSCB Nov. 14, 1997

("Virtual" National Securities Commission, continued from cover)

Under the mutual reliance review system (MRRS), an issuer will file documents with each relevant jurisdiction, but will generally deal only with one principal jurisdiction. The issuer will receive a National Decision Document from the principal jurisdiction. This document will confirm the decisions of all relevant jurisdictions that have not opted out of the system for that filing. Certain non-principal jurisdictions will also issue a local decision document. Filers, however, will be entitled to rely on the National Decision Document.

For reporting issuers and registrants, the mutual reliance system will simplify and possibly speed up regulatory service. In addition, regulators will be able to develop greater familiarity with the issuers for which they act as principal. The new system is designed to reduce duplication of effort and inconsistency of regulation. Potentially, regulators may also have more resources to devote to other areas, such as enforcement, compliance and continuous disclosure review.

National Canadian Securities Administrators (CSA) staff committees are in the process of finalizing the memorandum of understanding that would formalize the new system. Publication of the memorandum and related instruments for comment is expected this Spring. In addition, the CSA have expressed their commitment to extending the concept of mutual reliance to other areas of regulation, such as continuous disclosure review, over time.

Background

The current drive towards a virtual national securities commission arose from a number of initiatives in the early 1990s aimed at increasing regulatory efficiency.

In 1994, the CSA adopted the Expedited Review system for short form prospectuses and Renewal Annual Information Forms that are filed in more than one jurisdiction by senior issuers. The system incorporated the concept of designating a single jurisdiction to act as the principal regulator.

That year the CSA formed the Task Force on Operational Efficiencies in the Administration of Securities Regulation. A key recommendation of the report, released in 1995, was to encourage the CSA to extend the concept of a designated jurisdiction to other aspects of regulation.

Mutual Reliance to Focus On Four Areas

Mutual reliance review systems are currently being developed for the following areas:

- Non-mutual fund prospectuses and AIFs;
- mutual fund prospectuses;
- the registration, in multiple jurisdictions, of SRO member dealers and advisers; and
- applications for discretionary relief and, where appropriate, coordination of exempting orders.

Although not yet finalized, the following details are currently being considered under the proposed mutual reliance review systems.

Prospectuses and AIFs - Non-Mutual Fund Issuers

Principal Jurisdiction

For existing POP (Prompt Offering Qualification System) issuers, the principal jurisdiction will be the current Expedited Review designated jurisdiction. For new POP issuers or non-POP issuers, the decision is based on the location of the head office. Where the issuer's head office is in a jurisdiction not prepared to act as principal, the principal jurisdiction will be the location of the issuer's principal trading market in Canada.

An issuer may apply to change its principal jurisdiction. Issuers would have to obtain consent from both their existing principal jurisdiction and their proposed new principal jurisdiction.

Review and Comment Period

The time periods are largely as currently set out in National Policy Statement No. 1. Unless a non-principal jurisdiction opts out of the MRRS, the filer will only deal with, and receive comment letters from, the principal jurisdiction.

Prospectuses - Mutual Fund Issuers

Principal Jurisdiction

The choice of principal jurisdiction will be based on the location of the head office of the mutual fund manager. If that jurisdiction is not prepared to act as principal jurisdiction, the mutual fund may choose a jurisdiction with some connection to the fund.

A mutual fund may apply to change its principal jurisdiction. The procedure would be similar to that for other issuers (see above).

Review and Comment Period

Largely as currently set out in National Policy Statement No. 1. The review and comment period would be similar to that of non-mutual fund prospectuses, as described above.

Applications for Discretionary Relief

This is a voluntary system.

Principal Jurisdiction

For an issuer, the principal jurisdiction is chosen in the same way as for a prospectus filed by the issuer. Other applicants will select the jurisdiction with which they have the most connection. If there is no connection to any jurisdiction, the applicant may choose a jurisdiction willing to act as principal.

Form of Application

Applicant will prepare one application in accordance with the securities laws of the principal jurisdiction and will file those application materials and the applicable application fees with all jurisdictions from which exemptive relief is sought.

Review by Principal Jurisdiction

The principal jurisdiction will provide an acknowledgment of receipt of the application to the applicant and all participating jurisdictions with whom the application has been filed. The principal jurisdiction is not subject to any time period for its review of the application.

Response Times for Non-Principal Jurisdictions
Non-principal jurisdictions will have ten working days from receipt of acknowledgment of filing from the principal jurisdiction to provide comments. They also will have an additional seven working days from receipt of the staff memo, recommendations and determination of principal jurisdiction to confirm whether it has made the same determination or is opting out of the MRRS for that application. If a participating jurisdiction can resolve its outstanding issues within the seven day opt out period, it can opt back in by giving notice to all other participating jurisdictions.

National Decision Document
In general, the Decision Document cannot be issued in less than 17 business days from the date that application for relief is filed. Some shortening of this time period may be arranged by the applicant with the agreement of the jurisdictions in which the relief is required.

Registration - SRO Members and Advisors
Principal Jurisdiction
For firms that are applying for registration as an adviser or as a dealer that is an SRO Member, the principal jurisdiction is based on the location of the adviser's or SRO Member's principal place of business in Canada.

For individual applications for registration with a firm adviser or with an SRO Member firm, the principal jurisdiction will be the jurisdiction in which the individual is resident. If advisers do not have a place of business in Canada, it is expected that they will choose the jurisdiction in which they have the largest number of clients and greatest volume of business.

"Under the mutual reliance review system (MRRS), an issuer will file documents with each relevant jurisdiction, but will generally deal only with one principal jurisdiction."

Application for Registration
For initial applications, the applicant will follow the procedures and comply with the conditions of the principal jurisdiction. The application materials must also be sent to all non-principal jurisdictions where registration is being sought.

Where the applicant is already registered with the principal jurisdiction but is seeking registration for the first time in other jurisdictions, the applicant must file with the new jurisdictions copies of the material already filed with the principal jurisdiction and a copy of the registration certificate, along with the appropriate fees.

Review by Principal Jurisdiction
The principal jurisdiction will use its best efforts to review an application and provide comments within 20 working days of receipt of a completed application.

Response Times for Non-Principal Jurisdictions
The non-principal jurisdictions will have five working days from the date the draft National Decision Document is sent to opt out of the system for an application by a firm. They will have three working days to opt out for an application filed by an individual.

"For reporting issuers and registrants, the mutual reliance system will simplify and possibly speed up regulatory service."

Ongoing Requirements
MRRS for registration applies only to initial registration requirements and directly related ongoing requirements, such as proficiency, capital and bonding. Local jurisdiction rules will continue to apply for all other ongoing matters, such as conduct of business and client disclosure.

Permanent Registration System
Most jurisdictions are expected to modify their renewal processes to adopt a permanent registration system similar to that in place in Quebec.

For more information, please call **Kathy Soden,** Manager, Market Operations, (416) 593-8149.

Perspectives is published quarterly by the Corporate Relations Branch of the Ontario Securities Commission. *Perspectives* welcomes letters to the editor.

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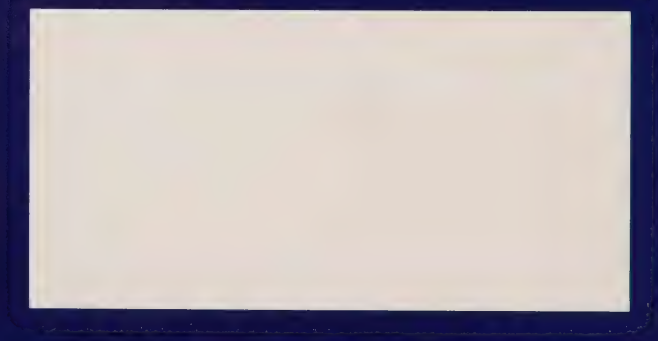

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

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inside...

FEATURE

Year 2000 Issues Demand Disclosure, Regulators Say

Regulators are addressing the potential for millennium mayhem by requiring companies that issue securities to disclose potential problems.

In January, the Canadian Securities Administrators (CSA) staff issued a Notice providing guidance to reporting issuers on their obligations to address the Year 2000 issue in continuous disclosure and prospectus documents. The Staff Notice has been sent to all Toronto Stock Exchange (TSE) listed companies and all companies reporting on the Canadian Dealing Network (CDN).

The TSE has passed a by-law requiring that material information on the Year 2000 be disclosed in annual reports. The TSE suggests that listed companies look to the January CSA Staff Notice to interpret this requirement.

The Staff Notice recommends that a reporting issuer's Management's Discussion and Analysis (MD&A) include:

- a discussion of the reporting issuer's vulnerability to the Year 2000 issue;
- a description of the reporting issuer's evaluation of its situation and the plans made to deal with critical systems;
- a discussion of the status of implementation of the plans and the expected timing of completion; and
- information about associated costs.

(continued on page 9)

INDEX

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

New Rules on Registration

In order to upgrade and codify regulations on registration, the Ontario Securities Commission has recently adopted and proposed a number of rules, policies and rule changes. Actions have included:

Surrender of Registration

- on April 7, 1998, the OSC adopted Rule 33-501 on Surrender of Registration and rescinded Uniform Act Policy Statement 2-07. The Rule requires that upon application for surrender of registration, the registrant consents to registration being suspended. The suspension will provide the registrant with a period of non-activity during which he or she can discharge obligations in an orderly manner, subject to the oversight of the Commission.
  OSCB Jan. 30., page 614

Inside Information

- on January 27, 1998, the OSC adopted Policy 33-601 on Guidelines for Policies and Procedures Concerning Inside Information. The Policy provides general guidelines to registrants concerning policies and procedures to prevent improper use of undisclosed material information (insider information). The Policy replaces OSC Policy Statement No. 10.2.
  OSCB Jan. 30, page 617

Compliance with Section 42

- on April 7, 1998, the OSC adopted Rule 33-504 on Compliance with Section 42 (Publication of names). The Rule provides an exemption from the requirements of Section 42 of the Act for members of The Toronto Stock Exchange (TSE) and Investment Dealers Association of Canada (IDA) who comply with related requirements of the SROs.
  OSCB Jan. 30, page 615

Limited Market Dealers

- on April 7, 1998, the OSC adopted Rule 31-503 on Limited Market Dealers. The Rule sets out the restrictions related to a limited market dealer registration and the conditions of registration for limited market dealers, their salespersons, officers and partners.
  OSCB Jan. 30, page 611

Proposed Rules:

Proficiency Requirements

- changes to proficiency requirements for registrants (Rule 31-502). Among other changes, the proposed Rule would update proficiency requirements for dealers and advisers by codifying OSC staff's administrative practice of accepting certain alternative courses. It also would adopt the proficiency requirements imposed by the TSE and IDA and apply these higher standards to securities dealers.
  OSCB Jan. 23, page 466

Registration of Compliance Officers

- changes to proposed Rule 31-505 on conditions of registration. The proposed Rule would codify staff's administrative practice of requiring compliance officers to be registered and consolidate current conditions of registration. It would also expand these requirements in order to apply to all categories of registrants and to individuals as well as firms.
  OSCB Jan. 23, page 405

Dealer as Administrator of Clients' Registered Plans

- with the CSA, National Instrument 33-101 regarding the administration of self-directed RRSPs, RESPs and RRIFs by dealers. The proposed National Instrument would impose conditions to protect clients' assets when dealers act as administrators of self-directed registered retirement savings plans (RRSPs), registered education savings plans (RESPs) and registered retirement income funds (RRIFs).
  OSC Feb. 13, page 963

Breach of Requirements of Another Jurisdiction

- with the CSA, National Policy Statement No. 34-201 on breach of requirements of other jurisdictions. The proposed National Policy would give notice to registrants and applicants that a breach of another jurisdiction's securities legislation may affect their fitness for registration. It would replace National Policy Statement No. 17.
  OSCB Feb. 13, page 968

Registrants as Corporate Directors

- with the CSA other than Quebec, Multi-Jurisdictional Policy 34-202 on registrants acting as corporate directors. The proposed Policy would alert registrants to the possibilities of a conflict of interest that can arise when a registrant is acting as a director of a reporting issuer. It would replace National Policy Statement No. 18.
  OSCB Feb. 13, page 972

For more information, please call **Nancy Ross**, Legal Advisor, Registration, (416) 593-8154.

Improvements to Communication with Beneficial Securityholders

The CSA has proposed National Instrument 54-101 on communication with beneficial securityholders, replacing National Policy Statement No. 41 (NP 41).

Since the advent of "paperless" securities trades, most investors hold their securities through an intermediary such as a broker, instead of taking possession of a certificate. Since

this means securities issuers often do not have complete lists of their beneficial securityholders, NP41 established procedures to deliver proxy-related materials to beneficial securityholders through intermediaries.

The new National Instrument would allow reporting issuers to obtain a list of non-objecting, beneficial owners from intermediaries holding securities on behalf of the beneficial owners. Beneficial owners are not shown on the issuer's records because their securities are held though the intermediary. If a beneficial owner is "non-objecting", it means he or she does not object to having their identity and securities position revealed to reporting issuers and others in accordance with the Instrument.

"Under the new Instrument, reporting issuers would be able to send materials directly to non-objecting, beneficial owners."

Under the new Instrument, reporting issuers would be able to send materials directly to non-objecting, beneficial owners. Issuers may also continue to distribute materials to non-objecting, beneficial owners indirectly through intermediaries, as is the current practice. If a securityholder does not respond to a request for instructions, they will be deemed to have given their consent to be non-objecting, beneficial owners.

The proposed National Instrument differs from NP41 in several other significant ways:

- The scope of materials that a beneficial owner may decline to receive has been narrowed. A beneficial owner can decline to receive proxy-related material for meetings at which only routine business is to be conducted or non-proxy-related materials not required by law to be sent to registered holders.
- Reporting issuers will no longer be able to override the decision of beneficial owners who decline to receive certain materials.
- Non-objecting, beneficial owner lists can be used by reporting issuers and other persons or companies for any matter relating to the affairs of the reporting issuer, subject to terms and conditions similar to those imposed by Canadian corporate law for the use of shareholder lists.
- Objecting beneficial owners — those who do not wish their identity revealed to reporting issuers — must continue to receive materials through their intermediary. They will be responsible for the costs incurred by their intermediaries in sending securityholder materials to them, unless the issuer is also sending those materials indirectly to non-objecting, beneficial owners through the intermediaries.

The proposed National Instrument has benefits for both reporting issuers and securityholders. Reporting issuers will benefit from being able to communicate directly with non-objecting, beneficial owners. Reporting issuers may choose which method to use to communicate to non-objecting, beneficial owners, and will have the ability to choose potentially less expensive means of communication with their securityholders. At the same time, by being identified, non-objecting, beneficial owners will be better able to change a vote and to attend or vote in person at meetings. Because they may choose to be objecting, beneficial owners may maintain confidentiality if they desire.

The Request for Comment period ends May 29, 1998. For more information, please call **Robert Kohl**, Legal Counsel, Market Operations, (416) 593-8233.

OSCB Feb. 27, page 1381

Exemptions for Trades by Issuers to Employees

As part of the ongoing rule reformulation process, the OSC has proposed a new Rule on exemptions from registration and prospectus requirements for trades by issuers of their securities to employees, executives and consultants. The Rule would enable companies to issue stock to employees, executives and consultants without approval by the OSC, under certain conditions.

The proposed Rule would incorporate exemptions not covered by current regulations but usually granted in practice. Changes from the current regime include:

- removing the requirement for approvals by the OSC Executive Director for certain issuances;
- providing new registration and prospectus exemptions for trades to non-employee officers who are not senior officers, subject to certain restrictions;
- providing new exemptions for trades to employee and executive RRIFs;
- extending exemptions to include trades to consultants and their companies, partnerships, RRSPs and RRIFs; and
- establishing a more simplified and comprehensive system of disclosure of trades under the exemptions in the Rule and a fee schedule for these trades.

The Request for Comment period ends May 22, 1998. For more information, please call **Cynthia Rogers**, Legal Counsel, (416) 593-8261.

OSCB Feb. 20, page 1113

Potential Underwriting Conflicts

A proposed Multi-Jurisdictional Instrument and Companion Policy would address the contentious issue of potential conflicts of interest during underwriting. The instrument is designed to reduce the number of cases in which an independent underwriter is required, but increase the independent's role in cases where serious potential conflicts of interest are identified.

The issue at stake concerns cases when the relationship between the issuer or selling security holder and the registrant acting as underwriter raises the possibility that the reg-

istrant will be in an actual or perceived conflict between its own interests and those of investors.

"The Instrument would increase the independent underwriter's role where serious potential conflicts of interest are identified."

At present the participation of an independent underwriter is required in such offerings. However, there is no requirement to specify the independent's duties or disclose its name. Proposed Multi-Jurisdictional Instrument 33-105 and Companion Policy 33-105CP would restrict the circumstances in which independent underwriters are required to those where there are significant regulatory concerns. In circumstances where a potential conflict is identified, it would require that the independent's name and its role in due diligence be disclosed and pricing be set out in the prospectus. In addition, the independent would be required to be responsible for a substantial portion of the offering — the lesser of 20% or the largest portion controlled by a non-independent underwriter.

The Instrument and Companion Policy have been proposed for implementation in all jurisdictions except Quebec.

For more information, please call **Tanis MacLaren**, Associate General Counsel, (416) 593-8259.

OSCB Feb. 6, page 781

POLICY UPDATE

Further information on OSC policy initiatives.

Prompt Offering (POP) System Updates

As part of its rule reformulation following the Ainsley decision (see OSC Perspectives, Winter, 1998), the CSA has proposed a National Instrument and Companion Policy to replace National Policy No. 47 on the Prompt Offering Qualification System (the POP system). The new National Instrument would also update a number of key areas of the POP system.

The POP system, outlined in NP 47, allows senior issuers to access Canadian capital markets rapidly and with a minimum of regulatory impediments, while maintaining investor protection and public disclosure. Key changes from NP 47 in the new National Instrument and Companion Policy would include:

- a change in the timing of the application of the public float test to within 60 days before the filing of the preliminary short form prospectus;
- the expansion of the POP eligibility criteria in a number of areas, including the addition of criteria and disclosure standards specifically for asset-backed securities and cash settled derivatives; and
- greater harmonization in the treatment of reorganizations and take-over bids.

The Request for Comment period ends May 22, 1998. For more information, please call **Susan Wolburgh Jenah**, Manager, Market Operations, (416) 593-8245.

OSCB Feb. 20, page 1138

Mutual Fund Sales Practices Rule Approved

As the mutual fund industry moves forward on the development of the new Self-Regulatory Organization (SRO), a new Rule came into force in Ontario on May 1, 1998 that restricts certain sales practices between fund management companies and distributors. The Rule is based to a great extent on the current Code of Sales Practices of the Investment Funds Institute of Canada.

The Rule:

- prohibits the payment of money or the provision of non-monetary benefits to a representative of a participating dealer (including cash marketing allowances or other marketing incentives)
- prohibits the payment of money or the provision of non-monetary benefits to a participating dealer; other than as permitted by the Rule
- prohibits the payment of bonus commissions to dealers
- requires that the prospectus of a mutual fund contain complete disclosure of commissions paid and other permitted incentives given to dealers
- requires prospectus disclosure and separate written point of sale disclosure of any equity interests that may exist between a member of the mutual fund organization and a participating dealer
- prescribes parameters for the payment of up front and trailing sales commissions
- does not permit fund companies to establish minimum asset or sales thresholds in respect of the payment of trailing sales commissions
- permits certain limited marketing costs of participating dealers to be paid by fund organizations on a cooperative basis
- permits members of fund organizations to organize educational conferences and seminars and to invite participating dealers to send representatives, provided that fund organizations may not pay the travel and accommodations expenses of attending representatives of participating dealers and the conferences or seminars are held in Canada and the continental United States or in other locations where a portfolio manager of the fund is located
- permits fund organizations to contribute towards the costs incurred by participating dealers in respect of educational conferences or seminars organized and presented by participating dealers for their representatives, on certain conditions, including no payment of the travel and accommodations costs or representatives and a requirement that the conference or seminar be held in Canada or the United States or in other locations where a portfolio manager of an applicable fund is located.

For copies of the Mutual Funds Sales Practices Rule, call the OSC Publication line at (416) 593-3699.

For more information, please call **Rebecca Cowdery**, (416) 593-8129.

OSCB Feb. 6, page 747; May 1

CANADIAN SECURITIES ADMINISTRATORS HIGHLIGHTS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada. The principal current initiative of the CSA is the establishment of the mutual reliance system. For more information, please see ***National Application System Proposed*** *on this page.*

CSA Announces Strategic Plan for 1998/99

At the January 1998 quarterly meeting, the CSA Chairs agreed upon a basic strategic plan for the CSA for the coming year. The purpose of the plan is to set out what the CSA should be trying to achieve and how the CSA should be organized and supported so that it can make progress toward its goals.

Purpose and Goals of the CSA

The Chairs agreed on the following statement of purpose for the CSA:

> The purpose of the CSA is to provide a forum for cooperation among provincial securities regulatory authorities in order to give Canada an efficient and effective securities regulatory system to protect investors and foster a fair, efficient and vibrant securities market.

The Chairs agreed upon the following general goals to guide the CSA in achieving its purpose:

- To protect investors from fraudulent, abusive and unfair practices in the securities market.
- To foster the development of a fair, efficient, dynamic and competitive securities market that will provide investment opportunities and access to capital for the benefit of Canadians in all regions and sectors.
- To develop an efficient, effective, responsive and enforceable national regulatory framework that serves and protects market participants in all regions of Canada and balances national harmonization with regional flexibility.
- To ensure that Canada participates actively and effectively in international regulatory arrangements and organizations.

Proposed Initiatives

The Chairs agreed upon two types of initiatives for the CSA to pursue in furthering its purpose and goals. First, the Chairs identified the substantive policy and administrative matters needed to regulate the markets better. Second, the Chairs identified the steps necessary for the CSA to be able to develop and implement the substantive initiatives.

Regulatory Policy and Administration:

1. Mutual funds - update rules and policies and expand regulatory presence;
2. Integrated Disclosure System - revamp existing disclosure system;
3. Civil Remedies - put forward recommendations on civil remedies to provincial governments;
4. Mutual Reliance - streamline the regulatory review process for prospectuses, registration of dealers and advisers and review of exemption applications (see "Virtual National Commission," OSC Perspectives, Winter, 1998);
5. Self-regulatory organization for all mutual fund distributors - create the self-regulatory organization and mandate membership;
6. Investor & industry education - produce new investor education materials and participate in the Saving and Investing Education Week;
7. Electronic trading systems - develop a regulatory approach.

CSA Effectiveness

1. Resources - obtain commitment from all jurisdictions;
2. Consultation - commit to effective consultation and consensus building;
3. Systems - fund and develop additional systems to support CSA work;
4. International Relations - Coordinate international relations through the International Organization of Securities Commissions and the negotiation of Memorandum of Understanding between the CSA jurisdictions and securities regulatory authorities in foreign jurisdictions (see page 7).

For more information, please call **Kathy Soden**, Manager, Market Operations, (416) 593-8149.

National Application System Proposed

The CSA has proposed a National Application System for the treatment of applications for discretionary relief. The System will be used on a test basis during the comment period.

The System is based on mutual reliance, meaning that a regulator in one jurisdiction will rely primarily on the analysis, review and recommendations of another jurisdiction for certain filings made in more than one jurisdiction in Canada (see OSC Perspectives, Winter, 1998). A mutual reliance system does not involve any surrender of jurisdiction or discretion by a participating jurisdiction.

The National Application System would work essentially as follows:

- An application will be drafted based on the legislative requirements of the principal jurisdiction. The application, with applicable fees, will be sent to the principal jurisdic-

tion as well as other jurisdictions where relief is required.
- The principal jurisdiction will review the application, communicate with the applicant and take comments from participating jurisdictions.
- The staff memorandum, recommendations and determination of the principal jurisdiction will be forwarded to all participating jurisdictions. They will decide whether to act in accordance with the principal jurisdiction or to opt out of the System for that application.
- The principal jurisdiction will issue a decision document on behalf of itself and all jurisdictions that have "opted into" the decision.

The Request for Comment period will close June 1, 1998. For more information, please call **Margo Paul**, (416) 593-8136.

OSCB Jan. 30, 1998, page 621

National Escrow Requirements

At its January meeting, the CSA reviewed the progress made in developing new national escrow requirements for initial public offerings, based on the premise that key management and related parties of an issuer should be tied to the issuer during its development and be rewarded for their accomplishments. The CSA's objective is to simplify the existing escrow requirements and eliminate the inconsistencies that currently exist across jurisdictions.

The CSA expects to release the new national escrow requirements for comment in the first half of 1998.

For more information, please call **Rick Whiler**, (416) 593-8127.

CSA Notice on Non-Payment of SEDAR Annual Filing Service Charges

Over the past year, thousands of reporting issuers have filed issuer profiles with SEDAR (System for Electronic Document Archiving and Retrieval). However, a significant number of reporting issuers have not paid the required SEDAR annual filing service charges.

"A significant number of reporting issuers have not paid the required SEDAR charges."

In order to treat all reporting issuers equitably, the Canadian Securities Administrators are taking steps to enforce payment of SEDAR annual filing service charges.

The CSA has identified two distinct situations in which there is a payment deficiency, the first being those in which:
1. an issuer profile has been filed in SEDAR;
2. no other filings have been made against the issuer profile; and
3. payment of the issuer's SEDAR annual filing service charges is delinquent by more than 90 days.

In these circumstances the issuer profiles will be removed from SEDAR without further notice. It is believed that most of these profiles are duplicates or are otherwise not intended for use by the issuer.

The second situation is one in which:
1. an issuer profile has been filed in SEDAR;
2. other filings have been made against the issuer profile; and
3. payment of the issuer's SEDAR annual filing service charges is delinquent by more than 90 days.

Issuers in this category will be placed on the list of defaulting issuers in those jurisdictions in which the issuer is a reporting issuer, provided the jurisdictions in question have mandated SEDAR.

For more information, please call **Karen Eby**, (416) 593-8242.

OSCB Dec. 12, 1997, page 6731

ENFORCEMENT

The following are summaries of recent enforcement proceedings. For more information, please call Larry Waite, Director of Enforcement, (416) 593-8156.

Dino P. DeLellis, William R. Kennedy and The Height of Excellence Financial Planning Group Inc. *Undisclosed commissions, misrepresentation, inappropriate financial advice and failure to insure compliance with terms and conditions of registration. (Public Interest (s.127))*

From 1992 to 1995, as an employee of AIC Investment Planning Ltd., Dino DeLellis sold units in a series of limited partnerships for which he received approximately $280,000 in undisclosed marketing commissions. These commissions were not permitted under the seed capital exemption in the Securities Act and the sales of the units contravened section 53 of the Act. DeLellis also misrepresented the tax implications, the risk and the future value of the units and sold units to clients for whom such investments were unsuitable. DeLellis' employment with AIC was terminated on October 17, 1995.

On February 29, 1996, DeLellis' registration as a mutual fund salesperson was transferred to The Height of Excellence Financial Planning Group Inc. ("FPG"), subject to certain conditions designed to ensure DeLellis' proper supervision. From February 17 to 19, 1997, a staff review of DeLellis' practices indicated a lack of supervision by FPG.

As a result of a staff investigation, it was alleged that DeLellis accepted secret commissions and made misrepresentations to his clients and generally failed to act honestly and in good faith with his clients.

On August 15, 1997, the Commission approved a Settlement Agreement in which FPG agreed that its conduct was contrary to the public interest in that FPG failed to: (a) adequately supervise DeLellis; (b) insure compliance with the

terms and conditions of his registration; and (c) insure that correct quarterly supervision reports were filed with the Commission. Under the terms of the agreement, FPG agreed to: (a) implement changes to its compliance procedures recommended after a review by Arthur Andersen & Co.; (b) provide a further report to Staff of the Commission detailing the implementation of the recommendations; (c) a reprimand from the Commission; and (d) pay $20,000 towards the costs of Staff's investigation.

On January 13, 1998, the Commission issued a decision terminating DeLellis' registration and removing the trading exemptions of DeLellis and William Kennedy permanently. The Commission found that, while with FPG, DeLellis: (a) was not properly supervised; (b) provided investment advice for the purchase and sale of securities for which he was not registered to trade; (c) provided inappropriate investment advice; (d) received split commissions for the sale of securities he was not registered to sell; and (e) allowed an assistant, who was not a registrant, to sign transaction records as the registered salesperson.

Roch Beaulieu, James Schofield, David Barnsdale, Ashton So and Ian Yeo. *Misleading advertising and marketing materials. (Public Interest (s.127))*

Between November 25, 1997 and January 19, 1998, the Commission approved Settlement Agreements between staff of the Commission and Roch Beaulieu, James Schofield, David Barnsdale, Ashton So and Ian Yeo.

Beaulieu, Barnsdale and Yeo agreed that their conduct was contrary to the public interest in that they distributed to clients a copy of a book on financial planning which could have misrepresented their role as the sole co-author along with Dean Albrecht, a financial marketing consultant who resides in the state of Florida. Schofield and So agreed that their conduct was contrary to the public interest in that they distributed to clients a copy of a book on financial planning which could have been misleading and named them as the sole co-author along with Dean Albrecht, when they were aware that others were named as co-authors in other versions of the same book.

Under the terms of the various Settlement Agreements, they agreed to orders suspending their registrations: Beaulieu, for ten days commencing December 8, 1997, Schofield for ten days commencing December 10, 1997, Barnsdale for fifteen days commencing January 8, 1998, So for twenty-four days commencing January 9, 1998, and Yeo for five days commencing January 19, 1998. Barnsdale, So and Yeo each agreed to contribute the amount of $1,000 towards the costs of Staff's investigation.

TD Securities Inc. *Proper attribution to authors of internally and externally prepared materials. (Public Interest (s.127))*

In a related case, the Commission approved a Settlement Agreement on March 16, 1998 between Staff of the Commission and TD Securities Inc. ("TDSI").

Pursuant to the terms of the Settlement Agreement, TDSI developed and implemented a comprehensive compliance policy in respect of authorship by its sales representatives to ensure that proper attribution is given to all authors for both internally and externally prepared materials. In approving the Settlement Agreement, the Commission noted that the policy was reviewed by the Investment Dealers' Association of Canada ("IDA") and approved as an appropriate policy to be implemented by its members. The Commission further noted that the policy is a positive step in endeavouring to ensure that the public is not misled by false claims of authorship by investment advisors. The Commission recommended the adoption of comparable procedures by other registrants which are not members of the IDA.

TDSI agreed to contribute the amount of $1,000 towards the costs of staff's investigation.

David Conforzi. *Misleading financial statements. (Misleading Statements (s.122(1)(b))*

David Conforzi, formerly President of Megalode Corporation, was sentenced on his conviction for filing with the Commission misleading financial statements for the year ended May 31, 1993 and the nine month period ended February 28, 1994. His Honour Judge Cavion imposed a one day term of imprisonment concurrent on each count, a probation order for 12 months, and a fine of $5,000 to be paid to a charity of Mr. Conforzi's choice which benefits the victims of crime.

PrimeNet Communications Inc., Raymond Homer, Robert Bleasby and James Laks. *Non-disclosure of information in regulatory filings. (Public Interest (s.127))*

On December 3, 1997, the Commission approved a Settlement Agreement with the above-noted respondents relating to breaches of the continuous disclosure obligations of the Securities Act and relating to the non-disclosure of information in documents filed with the Commission by PrimeNet Communications Inc. ("PrimeNet").

PrimeNet failed to disclose a $450,000 payment to a company controlled by David Austin, the former president and chief executive officer of PrimeNet. The respondents agreed that the payment was a material change in the affairs of PrimeNet and that their actions were contrary to the public interest.

Under the terms of the Settlement Agreement: (a) Raymond Homer, James Laks and Robert Bleasby agreed not to serve as a director or officer of a reporting issuer for a period of eighteen months; (b) PrimeNet received a reprimand from the Commission; (c) PrimeNet agreed to provide its shareholders and special warrant holders with an accounting of monies received by PrimeNet from the Special Warrant Financing; (d) Raymond Homer, James Laks and Robert Bleasby agreed to complete the Ivey Directors program offered by the University of Western Ontario by May 4, 1999 or such other directors' educational course approved by the Director of Enforcement of the Commission; and (e) the Respondents contributed $20,000 towards the costs of staff's investigation.

R.D.G. Minerals Inc. *Misleading disclosure to public. (Public Interest (s.127))*

On February 11, 1998, the Commission announced that trading in shares of R.D.G. Minerals Inc. was to cease.

The order noted that two corporations had issued news releases announcing takeover bids for R.D.G. Minerals Inc.

but that no bid circular had been filed in respect of either bid. The order also noted that R.D.G. Minerals Inc. had made disclosure concerning its ownership of, or its rights to acquire, substantial mineral deposits, which disclosure may have been misleading.

On February 25, 1998, the Commission revoked the order. In ordering that the shares of R.D.G. Minerals Inc. resume trading, the Commission noted that the two bidder corporations had withdrawn their bids and that R.D.G. Minerals Inc. had issued a news release clarifying the issues referred to in the original order.

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

David A. Brown Appointed New OSC Chair

David A. Brown, Q.C., has been appointed as the Chair of the Ontario Securities Commission. The term of appointment is five years.

Mr. Brown was a senior corporate law partner of Davies, Ward & Beck, where he had been a partner for 28 years. His practice included mergers and acquisitions, banking, project finance and securitization, corporate and commercial, corporate finance and securities, alliances, reorganizations, restructurings and workouts.

He received his Bachelor's degree in Civil Engineering from Carleton University in 1963 and an LL.B. from the University of Toronto in 1966. He was appointed Queen's Counsel in 1984.

OSCB March 20, page 1835

New Members Appointed to Commission

The Ontario Securities Commission announced the appointments of **Derek Brown** and **Stephen Paddon** as Members of the Ontario Securities Commission. Mr. Brown was appointed on October 22, 1997 and Mr. Paddon was appointed on January 29, 1998.

Derek Brown served as a Vice-President and Director of RBC Dominion Securities Inc., in investment banking from 1971 until his retirement from the firm in 1996. He is presently Adjunct Professor of Finance at the Joseph L. Rotman Centre for Management, University of Toronto.

R. Stephen Paddon, Q.C. has had extensive experience in corporate, securities and insurance law, as well as litigation, during his 37 years at the bar. He is currently associated with the Bennett Jones Verchere law firm as counsel.

OSCB Feb. 20, page 1070

OSC Statement of Priorities

The Securities Act requires the Commission to deliver a statement of the Chairman to the Minister of Finance each year, setting out proposed priorities for the coming year.

In the April 3 edition of the OSC Bulletin, the OSC published a draft of its Statement of Priorities for the fiscal year ending March 31, 1999. After approval by the Minister, the final statement will serve as the guide for the Commission's operations business plan over the next year. Interested parties should comment by June 1, 1998.

For more information, please call **Robert Day**, Manager, Business Planning, (416) 593-8179.

OSCB April 3, page 2157

International Organization Issues Paper on Securities Regulation

The Technical Committee of the International Organization of Securities Commissions (IOSCO) has approved the limited release of a draft paper entitled "Objectives and Principles for Securities Regulation."

"The OSC has been asked to consult with relevant experts to provide additional comments."

The draft paper sets out the principles which should govern in securities regulation and is intended to encourage the adoption of high regulatory standards. The three core objectives of securities regulation are: (1) the protection of investors; (2) ensuring that markets are fair, efficient and transparent; and (3) the reduction of systemic risk. The draft paper sets out 30 principles of securities regulation on such topics as: Principles for Self-Regulation, Principles for Compliance Programs and the Enforcement of Securities Regulation, and Principles for the Secondary Market.

The Ontario Securities Commission has been asked to consult with relevant experts to provide additional comments before the paper is finalized. In particular, it is noted that the following statement from the draft paper could be expanded to reflect in detail the regulatory implications of the globalization of financial markets: "The increasing internationalization of financial activities and integration of global financial markets provide significant challenges to securities regulators."

Interested parties are invited to provide comments and suggestions to the Ontario Securities Commission directly by

May 15, 1998, if possible. Interested parties should contact **Randee Pavalow** at (416) 593-8257 or **Susan Greenglass** at (416) 593-8140 to obtain a copy of the draft paper.

A Poison Pill Update

On April 8, 1998, the Ontario Securities Commission, jointly with the Alberta and British Columbia Securities Commissions, heard an application by CW Shareholdings Inc. to cease trade the shareholder rights plan of WIC Western International Communications Ltd. The rights plan had been adopted by the board of directors of WIC on March 28th, in response to the take over bid made by CW Shareholdings, a subsidiary of CanWest Global Communications Corp., on March 24, 1998 for all of the Class A and B shares of WIC. In their joint decision, the Commissions ordered the rights plan be cease traded on April 21, 1998 if not waived by the directors of WIC by 4:00pm Toronto time, on April 20, 1998. For more information contact **Cathy Singer**, General Counsel, (416) 593-8082.

Notice — Accounting Guidance on Closed-end Investment Funds

A Staff Notice was recently published setting out staff's view on the application of generally accepted accounting principles in accounting for initial offering costs incurred, directly or indirectly, by closed-end investment funds. The Notice also provides staff's views with respect to the treatment of initial offering costs for purposes of determining published net asset value per unit for such funds.

For more information, please call **Ram Ramachandran**, Associate Chief Accountant, (416) 593-8253.

OSCB Dec. 5, page 6414

Reminder on Compliance Report on Commingling of Money

The OSC recently sent letters to all principal distributors of mutual funds and participating dealers registered with the OSC to remind them of their obligation to file a Compliance Report on commingling of money, in accordance with Section 12.04 of National Policy Statement No. 39. The report is required to be accompanied by an audit opinion given by the registrant's external auditors in accordance with Section 5815 of the Canadian Institute of Chartered Accountants (CICA) Handbook. The report has to be filed within 120 days after the fiscal year end. This is not a new filing requirement.

For more information, please call **Carlin Fung**, Compliance, (416) 593-8226, or **Toni Ferrari**, Manager, Compliance, (416) 593-3692.

OSCB Dec. 19, page 6888

Fee Payment Rule

In keeping with the OSC's transition to self-funding status, there is a new Rule requiring that all fees payable under Ontario securities law be paid to the Ontario Securities Commission. Formerly, the regulation required that all fees be paid to the Minister of Finance.

The new rule is effective as of May 4, 1998. For more information, please call **Tanis MacLaren**, Associate General Counsel, (416) 593-8259.

OSCB Nov. 21, 1997, page 6117

Rule Reformulation Quarterly Summary

The OSC publishes a Quarterly Summary of Publications to provide information to the public regarding OSC rules, policies and notices, including the status of the various instruments being reformulated. The first summary was published in the Ontario Securities Commission Bulletin for reformulated instruments only. It has been expanded as of February 14, 1997 to cover all rules and policies being considered by the Commission as well as notices. The Quarterly Summary is published on the first Friday after the last day of the last month of each quarter. To assist the reader, two lists are included: one of all publications by date of publication, and one of all publications by subject area.

The Quarterly Summary was cumulative until the end of 1997. The 1997 Year End Quarterly Summary of Publications is published in the Ontario Securities Commission Bulletin on January 2, 1998. At that time, a table of concordance was also published which sets out the old titles of instruments, new instrument numbers and status as at December 31, 1997.

The Quarterly Summaries published in 1998 will only contain information regarding publications in 1998. The Quarterly Summary for the first quarter of 1998 was published in the April 3, 1998 OSC Bulletin.

For more information, please call **Susan Greenglass** at (416) 593-8140.

Fax Filing of Insider Reports

On April 10, 1998, the Commission made a Rule allowing for the signing, filing and delivery of insider reports by facsimile. It is anticipated that the Minister will approve the Rule by June 22. A Notice will appear in the Ontario Securities Commission Bulletin when the Rule comes into force.

Under the Rule, if an insider report is filed by fax,

another copy does not have to be mailed or delivered to the Commission. The Commission has specified (416) 593-3666 as the fax number to which fax filings should be sent.

For more information, please call **Susan Greenglass**, Policy Coordinator, (416) 593-8140.

OSCB April 10, page 2285

Survey: Public Knowledge of Investing, OSC

Commissioned by the OSC, an Angus Reid survey indicates that many Ontarians have limited understanding of the basics of investing. Similarly, many do not have a clear understanding of the Commission's role in the marketplace.

"Twenty-six percent do not understand the basic relationship between risk and return."

While 67% of Ontarians report having personal financial investments, only 18% consider themselves to be highly knowledgeable about investing. Moreover, 26% do not understand the basic relationship between risk and return.

The survey showed 48% of respondents are aware of the Ontario Securities Commission, largely through coverage in print and broadcast media. Although 41% regard the OSC as a "watchdog," 19% say they don't know what the Commission's role is. However, no negative impressions of the OSC were noted.

For more information about the survey, please call **Nancy Stow** at (416) 593-8297, or **Monica Zeller**, Communications Officer, at (416) 593-8120.

(Year 2000, continued from cover)

In view of the issue's importance, staff will review the 1997 MD&A for a sample of companies to evaluate the adequacy of Year 2000 related disclosure. Because of the short time frame to address Year 2000 issues, the CSA staff believe reporting issuers should consider updating annual MD&A disclosure in interim financial reports.

The Staff Notice also suggests that reporting issuers carefully assess the Year 2000 information that should be disclosed in a prospectus in order to meet securities legislation requirements. It is expected that this disclosure be comparable to the disclosure in the annual MD&A.

Currently, staff is including a review of Year 2000 issues during full reviews of prospectuses. In addition, if staff identifies companies as having particularly significant requirements for Year 2000 disclosure, perhaps because of their nature of business, they may be subject to an issue-oriented review.

FAST FACTS:

A recent Statistics Canada survey of 2,000 Canadian companies indicated that less than half have taken action to prepare for "Year 2000" computer problems.

Registrants Also Affected By Year 2000 Issues

Earlier this year, the OSC Chair wrote to all registrants, including mutual fund dealers, securities dealers, scholarship fund dealers and limited market dealers. The letter outlined registrants' obligations on Year 2000 compliance issues, and asked them to assess the risks and implement a plan to become compliant.

In particular, the letter urged mutual fund managers to review their disclosure obligations in light of the Staff Notice, and consider what they should disclose both in their financial statements and in their prospectus documents. The Chair sent a similar letter to mutual fund managers that are not registered with the Commission.

The OSC and the Year 2000

The Commission itself does not have major internal problems related to the Year 2000 issue. It has evaluated its current systems in order to identify potential problem areas and is now taking remedial actions.

For more information, please call **Barbara Hendrickson**, Legal Counsel, Market Operations, (416) 593-8084.

OSCB Jan. 30, page 582

John A. Geller Addresses Board of Trade on Mutual Funds and Investor Education

Following are excerpts from the remarks of John A. Geller, Acting OSC Chair, to the membership of the Investment Funds Institute of Canada and the Toronto Board of Trade on April 1, 1998. The speech was given as the OSC marked Investor Education Week.

The OSC and the Mutual Fund Industry: Our Common Interest in Investor Protection.

"For the mutual fund industry in particular, the time is right, perhaps overdue, for a new and heightened focus on investor education. I think it is fair to say that mutual fund education — for both investors and professionals — has not kept pace with the industry's growth in size and complexity...

Understandably, there is confusion out there. Sometimes this confusion leads to situations where investors inadvertently get in over their heads. Or worse, where unscrupulous people take advantage of investor confusion to sell unsuitable products...

...(In one case), a mutual fund salesperson sold partnership units in limited partnerships established purportedly to deal in cattle produced from frozen embryos. His main method of obtaining new clients was so-called educational seminars paid for in part by mutual fund management companies, at which well-known speakers were used to attract a large audience...

Consequently, the OSC recently embarked on a policy project to explore new rules and standards for investor education activities by industry professionals, including seminars. We will, of course, be consulting broadly on any Rules which may be proposed.

Obviously, we want to encourage the industry to devote resources to investor education. But at the same time, there are issues of potential conflict of interest and of ulterior motives. There must be a way to balance the industry's legitimate right to promotion of their products with investors' need for protection and their right to be dealt with fairly and honestly.

"The OSC recently embarked on a policy project regarding investor education activities by industry professionals."

As participants in the self-regulatory process, mutual fund dealers will share with the government regulators the responsibility to ensure that investors are properly protected, and that the securities markets do not fall into disrepute because investors have cause to believe that their interests are disregarded by those whom they should and must be able to trust, the people on whom they rely for investment advice.

I am sure that you will share our view that investor education is an essential component in achieving this result. We look forward to our co-operative efforts to achieve these goals."

OSCB April 3, page 2105

Perspectives is published quarterly by the Corporate Relations Branch of the Ontario Securities Commission. *Perspectives* welcomes letters to the editor.

If you wish to be on the mailing list for Perspectives, please contact us at:

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Ontario Securities Commission,
Corporate Relations Branch,
20 Queen St. West.
Toronto, M5H 3S8
(416) 593-8117

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 1, Issue 3

Government Publications

SUMMER 1998

Inside...

FEATURE

Setting New Standards: Reporting on Mining Exploration and Development

On June 8 1998, a Task Force established by the Ontario Securities Commission and the Toronto Stock Exchange in the wake of Bre-X proposed new and higher disclosure standards for Canadian mining companies than exist in any other major mining jurisdiction. The recommendations aim to reinforce Canada's leadership in the exploration and mining industry, ensure a high level of investor protection, and reinforce global investor confidence in the Canadian securities markets.

The key recommendations in the TSE/OSC Mining Standards Task Force Interim Report include:

1. Formalizing the role of the Qualified Person (QP) in all disclosure. A QP is defined to be a person with five years of appropriate experience and membership in a professional association of engineers or geoscientists. All disclosure regarding material mining projects will have to be based on the work of a QP.
2. Extension of QP involvement to exploration activity reporting. The Mining Standards Task Force has specifically recommended the involvement of a QP in all disclosure related to exploration properties and results, which goes beyond the Australian requirements for QP involvement.

(continued on page 9)

INDEX

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Proposed Legislation on Civil Liability for Continuous Disclosure

If proposed legislation is put in place, investors in Ontario and several other provinces will have a statutory right of reliance in civil actions brought against issuers for misleading statements in news releases, annual reports and other continuous disclosure documents. The legislation would support the OSC's commitment, stated in its 1998/99 Business Plan, to increase its regulation of the secondary market, in part by devoting more resources to reviewing continuous disclosure filings.

"The legislation would support the OSC's commitment, stated in its 1998/99 Business Plan, to increase its regulation of the secondary market..."

The Canadian Securities Administrators developed the proposed legislation in response to the recommendations of the final report of the Toronto Stock Exchange Committee on Corporate Disclosure. The TSE Committee found evidence of disclosure violations and a perception of inadequate disclosure in Canada. It also recommended that investors have the same statutory remedy for misrepresentations in continuous disclosure documents and oral statements as currently exists for misrepresentations in a prospectus. More information on these and other initatives may be found on the OSC web site *www.osc.gov.on.ca*.

Several CSA members, including the securities commissions in Ontario, British Columbia, Alberta and Saskatchewan, published the proposed legislation for comment on May 29, 1998. The comment period in Ontario is 90 days.

The CSA has noted that the TSE Committee's recommendations were controversial, and they anticipate governments will receive criticism regarding the proposed legislation. Although the OSC has recommended that the proposal be adopted, the Ontario government has made no decision to proceed.

The Notice and Request for Comment also indicate that the CSA will consider other TSE Committee recommendations, such as the adoption of an integrated disclosure system for reporting issuers.

For more information, contact **Susan Wolburgh Jenah**, Manager, Market Operations (416) 593-8245.

21 OSCB, May 29, 1998 page 3367

"The Virtual National Commission": Mutual Reliance Review System Memorandum Issued for Comment

On June 22, a draft Memorandum of Understanding establishing the Mutual Reliance Review System was published. The MRRS aims to improve the time and cost efficiencies of Canada's capital markets by streamlining the review of key filings (see Perspectives, Winter 1998).

Under mutual reliance, a filer would generally deal with only one securities commission in Canada, its principal regulator. The system is not mandatory; if an issuer does not wish to use the system, it can choose to file its documents in each relevant jurisdiction.

"The CSA is currently seeking volunteers to participate in testing of the MRRS."

The MRRS would apply to the filing of prospectuses (including mutual fund prospectuses) and initial annual information forms, registration applications for advisers and SRO dealers and applications for discretionary relief.

The CSA has published for comment drafts of the following instruments that would bring mutual reliance into effect:

- the MRRS memorandum of understanding among the members of the CSA;
- National Policy 43-201, MRRS for Prospectuses and Initial Annual Information Forms; and
- National Instrument 31-101 and Companion Policy 31-101, MRRS for Registration.

The CSA is currently seeking volunteers to participate in testing of the MRRS for prospectuses and Initial Annual Information Forms and welcomes all comments on the MRRS.

A concept release related to MRRS for applications was published for comment in January 1998. The comments and results of testing are currently being evaluated and a policy is being developed. It will be issued for comment shortly.

For more information, see the Request for Comments published in the OSC Bulletin on June 19, 1998, call **Kathy Soden**, Manager, Market Operations, (416) 593-8149; or visit the OSC web site *www.osc.gov.on.ca*

21 OSCB June 19, 1998 page 3882

Escrow Regime for IPOs

The OSC together with the other members of the CSA has published for comment a proposal for a National Escrow Regime applicable to Initial Public Distributions.

The securities legislation of most of the provinces and territories in Canada prohibits the regulator from issuing a

receipt for an issuer's prospectus where an escrow agreement that the regulator considers necessary or advisable has not been entered into. To date there has been no uniform approach to escrow among the securities regulatory authorities of the different Canadian jurisdictions. The CSA believes that a simplified, uniform national approach to escrow will promote greater efficiency and place issuers, principals and public investors in different jurisdictions on a more level footing.

The proposal has been structured around the fundamental objective of ensuring that issuers' management and other key principals retain an equity interest in an issuer for an appropriate period following an initial public distribution by prospectus (IPO). This continuing interest provides an incentive for the principals to remain with, and devote their time and attention to the affairs of the issuer, to the benefit of all shareholders.

For more information, contact **Rick Whiler**, Lead Accountant, Market Operations (416) 593-8127, or **Ram Ramachandran**, Associate Chief Accountant, (416) 593-8253.

OSCB May 8, 1998 page 2927

Exempt Distributions

Following a comment period, the OSC has amended a proposed Rule, Policy and Forms on Exempt Distributions (Rule 45-501), and is republishing them for comment.

The purpose of the proposed Rule is to consolidate current requirements on exempt distributions. It also establishes some new exemptions from the registration and prospectus requirements of the Act. The proposed Rule also sets out restrictions on the resale of securities purchased in reliance on certain exemptions. In addition, the Commission has concluded that the phrase "initial exempt trade" permits "tacking" of hold periods.

For more information, call **Iva Vranic**, Legal Counsel, Market Operations (416) 593-8115.

21 OSCB May 29, 1998 page 3386

Amendment to Local Definitions Rule

In July 1997, the OSC adopted Rule 14-501 on Definitions to provide a consistent approach to the interpretation of terms used in more than one rule. The Rule contains definitions of terms in the Act or the Regulation that are defined other than in the general definition section of the Act. This is so as to extend their application to the rules formulated under section 143 of the Securities Act. This Rule also provides a framework of terms with definitions agreed on by the Commission for use in future rules.

Currently, a proposed amendment to this Rule would amend, delete or add certain terms. Some of the more material amendments include:

- amending the definition of "contractual right of action" to extend it to any seller of securities and to extend the time period for exercise from 90 days to 180 days;
- amending the definition of "offering memorandum" to delete references to particular prospectus exemptions; and
- adding definitions of "future-oriented financial information" and "non-redeemable investment fund."

For more information, call **Randee Pavalow**, Manager, Market Operations (416) 593-8257.

21 OSCB April 10, 1998 page 2341

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

Year 2000 Steering Committee Created

To provide a focal point for the OSC's Year 2000 initiatives, the Commission has created a Steering Committee that includes senior Commission staff and outside consultants with expertise on the issue (see Perspectives, Spring 1998).

The Committee is expected to develop a number of specific projects within the Commission regarding the Year 2000. It will also harmonize the OSC's efforts with those of the Toronto Stock Exchange (TSE), the Investment Dealers Association of Canada (IDA), the Canadian Depository for Securities (CDS), the Group of 30, and other members of the CSA.

For more information, call **Barbara Hendrickson**, Project Coordinator, OSC Year 2000 Project, (416) 593-8084. Or visit the OSC web site *www.osc.gov.on.ca.*

21 OSCB June 12, 1998 page 3662

OSC Statement of Priorities

On June 24, 1998, the Ontario Securities Commission's **Statement of Priorities** for 1998/99 was submitted to the Minister of Finance and published in the OSC Bulletin on June 26, 1998 (Perspectives, Spring 1998). A draft of the Statement was published in the April 3, 1998 Bulletin with a Request for Comment. The comments received were generally favourable. No revisions were made as a result of feedback; however, one additional priority was added dealing with Year 2000 issues.

For more information contact **Mark Conacher**, Director, Corporate Relations, (416) 593-8073, **Robert Day**, Manager, Business Planning, (416) 593-8179, or visit the OSC web site *www.osc.gov.on.ca.*

21 OSCB June 26, 1998 Page 4017

Financial Planning Regulation At Issue

Following the withdrawal of the Canadian Securities Institute (CSI) and the Institute of Canadian Bankers (ICB) in April from the Financial Planners Standards Council (FPSC), the Ontario Securities Commission is meeting with industry organizations to urge the creation of a common proficiency standard for financial planners.

The Council was formed two years ago to develop uniform standards for financial planners. Since withdrawing from the Council, the CSI and the ICB have announced plans to establish their own proficiency standards for financial planners. On behalf of the CSI and other members of the Securities Industry Advisory Council, the Investment Dealers Association has indicated that financial planners at securities firms would be subject to rules similar to those now applied to stockbrokers.

"The OSC is considering how it will oversee financial planners in the future."

In addition to encouraging the development of a single proficiency standard, the OSC is also considering how it will oversee financial planners in the future. Possibilities include creating a new category of registration of financial planners; legislating regulation of financial planners, as is currently underway in Saskatchewan; or regulating the financial planning activities of current OSC registrants.

For more information, contact **Paul Bourque** Director, Market Operations, (416) 593-8204.

OSC Developing NETS Rule

With NETS (Non-SRO sponsored Electronic Trading Systems) fast becoming a major force in the securities industry, the OSC is developing a regulatory framework that addresses the key issues raised by this kind of trading.

The OSC hosted a forum on April 23 at which more than a dozen industry participants presented their recommendations concerning the inclusion of NETS in the market for Canadian equities. Views ranged from the argument that NETS should be allowed to operate unimpeded in the marketplace, to the belief that trades, bids and offers that occur on NETS must be integrated into established stock exchanges in order to preserve market transparency (public display of information).

OSC staff is currently working on preparing a draft rule, expected to be released for comment this autumn.

For more information, call **Randee Pavalow**, Policy Coordinator, (416) 593-8257.

20 OSCB May 16, 1997 Page 2565

New Insurance Regulator and New Council of Financial Regulators Proposed

To cope with a dynamic financial services industry in which a growing number of firms offer an array of products including insurance and securities, a draft paper recommends the creation of a new agency to regulate insurance distribution and the establishment of a Council of Financial Services Regulators.

The discussion paper issued by the Ontario Insurance Commission in June proposes a self-funded regulatory body with rule-making power that would regulate all forms of insurance distribution — direct or through intermediaries, group or individual products, general or life insurance. The Insurance Act would be amended to update its provisions, eliminating outdated limitations, and to clarify the accountability of a firm for the actions of its sales staff.

In order to increase regulatory coordination, the paper also proposes the creation of a Council of Financial Regulators of Ontario. It would be made up of the heads of the OSC, the Financial Services Commission and the proposed insurance distribution regulator. The Council's mandate would be to enhance the quality and efficiency of regulation of financial services in Ontario. Council initiatives might include developing one-stop access to financial services regulators for both consumers and industry participants and developing ways to reduce duplication, gaps or conflicts in the regulatory system.

The document is available at the Ontario Insurance Commission's Web site (www.ontarioinsurance.com), or by calling 1-800-263-7695. For more information, call **Tanis MacLaren**, Associate General Counsel, (416) 593-8259.

21 OSCB June 26, 1998 Page 4024

OSC To Upgrade Insider Reporting Monitoring

With the resources available due to self-funding, the OSC is now focusing greater attention on monitoring and enforcing the timeliness and accuracy of insider reporting.

"The Committee envisions the development of a central database of insider reports and related information."

In its Statement of Priorities for 1998/99, the OSC noted that initiatives in this area are underway. This includes the creation of a single, national system for filing insider reports, approved by the CSA on April 2. A Working Committee with representatives from Ontario, Alberta, British

Columbia and Quebec met in Toronto on June 18-19 to determine the system requirements for electronic filing. The system would be Internet-based, with provision for paper and fax filing as well.

The Committee envisions the development of a central database of insider reports and related information. Input and access would be available to authorized users through an Internet browser. The system would also allow for public inquiries on the Internet, based on parameters such as issuers, insider, and dates of trades or filings. A Request for Proposal is now being prepared on developing and operating this system on behalf of the CSA.

Other initiatives on insider reporting include the following:

- The OSC will publish a compliance guidance manual to assist filers in understanding filing requirements.
- The OSC made a Rule allowing the filing of insider reports by fax, making it easier for insiders to report, and also lowering the OSC's administrative burden of checking for duplicate reports. The Rule came into effect on May 5, 1998.
- The OSC has prepared amendments to the *Securities Act* to improve reporting requirements, which currently require that insiders report within 10 days following the end of the month the transaction took place.

For more information, call **Paul De Souza**, Manager, Market Operations (416) 593-8313.

Eaton's Preliminary Prospectus Leak

The leak of information from the preliminary prospectus of the T. Eaton Co. Limited, before it was filed with the OSC, has led the Commission to ask the underwriting syndicate to provide information on its internal investigations of the matter.

On April 14, 1998, an article appeared in The Globe and Mail regarding a proposed $175 million IPO by Eaton's. The next day, another article appeared with details provided by "sources" who had read a draft of the preliminary prospectus. The preliminary prospectus was filed with the OSC on April 17.

Following publication of the articles, OSC staff met with a representative of Eaton's, the lead underwriters and their legal advisors on this issue. Staff believe that releasing the information in the articles prior to the filing was a "clear and serious contravention of the *Securities Act*." In general, the release of information prior to the filing of a preliminary prospectus is a violation of Ontario securities law and may lead to enforcement action and/or the imposition of a "cooling off period" between the leakage of the information and the issuance of a receipt for the preliminary prospectus.

In this case, staff noted that the information reported by the Globe was accurate and not unduly promotional, and decided that it was in the public interest to allow all information about the IPO to be made public. Accordingly, the preliminary prospectus was filed and receipted on April 17.

The OSC has sent a letter to all parties involved in the offering requesting a summary of current procedures to prevent the dissemination of confidential information, as well as procedures followed in this case. Staff have also asked for information on the underwriters' internal investigations.

For more information, call **Paul Bourque**, Director, Market Operations, (416) 593-8204.

21 OSCB April 24, 1998 page 2565

Financial Conglomerates Joint Forum

The Joint Forum on Financial Conglomerates has released a number of working papers on important issues for regulators and financial supervisors in the banking, securities and insurance sectors. In particular, the papers address issues arising from the continuing emergence of internationally active financial conglomerates and the blurring of distinctions between key financial sectors.

The Joint Forum was established in 1996 under the aegis of the Basle Committee on Banking Supervision, the International Organization of Securities Commissions (IOSCO), and the International Association of Insurance Supervisors (IAIS). Thirteen counties are represented, including Canada.

The Joint Forum documents are accessible on the IOSCO Web site (http://www.iosco.org.)

For more information, call **Tanis MacLaren**, Associate General Counsel (416) 593-8259.

21 OSCB February 27, 1998 page 1348

Use of Currencies: Proposed National Instrument

The Proposed National Instrument on Use of Currencies and Rescission of National Policy Statement No. 14 (NI 52-102) regulates the use of currencies in material filed or delivered to securities regulatory authorities and securityholders under securities legislation. It is based on and will replace National Policy Statement No. 14.

The proposed National Instrument applies to financial information, including any financial statements presented in a bid document (e.g. take-over or issuer bids) or disclosure documents. It requires the currency of display of financial information to be disclosed.

NP14 permits financial disclosure using any currency of display provided that their currency is reasonable in the circumstances. This reasonableness test has caused ambiguity in the past. As a result, the reasonableness standard has been replaced in the proposed national instrument by a requirement that the currency of display be the measurement currency, the Canadian dollar, or the US dollar. The measurement currency is the primary currency used by a person or company.

In addition, the proposed National Instrument requires the measurement currency to be disclosed if it is other than the Canadian or US dollar, or if it is not the same as the currency of display for financial information.

For more information, call **Ram Ramachandran**, (416) 593-8253.

21 OSCB May 29, 1998 Page 3424

Change of Auditor: Proposed National Instrument

Proposed National Instrument 52-103 (Change of Auditor and Rescission of National Policy Statement No. 31) regulates the disclosure required when a reporting issuer changes its auditor. It is based on and will replace National Policy Statement No. 31.

The proposed national instrument introduces a number of changes, including a new requirement that the change of auditor notice be signed by two representatives of the issuer's board of directors. It also introduces a new exemption when there is a change of auditor because of an amalgamation, arrangement, take-over bid or similar transaction, if that change has been disclosed and there has been no disagreement or consultation in the relevant period.

For more information, call **Ram Ramachandran**, (416) 593-8253.

21 OSCB May 29, 1998 Page 3430

Amendment to CBCA Filing Order

The OSC is the regulatory body responsible for regulating certain provisions of the Ontario Business Corporations Act. In accordance with that, as of January 30, 1998, the Canada Business Corporations Act (CBCA) Director's single filing order has been amended to add British Columbia. All ten provinces and two territories are now covered.

The order provides that insider reports, interim financial statements, prospectuses, statements of material facts, registration statements and news releases ordinarily required to be filed with the CBCA office need not be sent to the Director if the documents containing similar information have been filed with any of the participating provincial and territorial securities commissions.

For more information, call **Industry Canada**, Corporation Directorate at (613) 941-9042.

21 OSCB April 3, 1998 Page 2103

OSC To Accept Insider Reports on Behalf of Newfoundland and Labrador

The Securities Division of the Government of Newfoundland and Labrador has designated the OSC to accept insider reports on its behalf.

Insiders of companies that are reporting issuers in both Newfoundland and Labrador, and Ontario (other than those for which Newfoundland and Labrador are the Designated Jurisdiction or where the issuer has been notified by the Securities Division that it cannot rely on this designation order) may now discontinue filing insider reports in Newfoundland and Labrador.

For more information, call **Paul De Souza**, Manager, Market Operations, (416) 593-8313.

21 OSCB March 20, 1998 page 1828

Incorrect Formats for SEDAR

About 15% of continuous disclosure filings made on SEDAR (System for Electronic Document Analysis and Retrieval) have unacceptable formats, according to the CSA. The result is an administrative burden for regulatory staff and delays in providing materials to the public.

Acceptable formats are:

- Corel WordPerfect for DOS or Windows, versions 5.1, 5.2 and 6.1
- Microsoft Word for Windows, versions 6.0x and 7.0
- Adobe Acrobat, versions 2.x and 3.0, the resulting format being commonly known as Portable Document Format (PDF).

For more information, call your local **CDS (SEDAR) Inc.** representative or the **Help Desk** at 1-800-219-5381.

21 OSCB May 15, 1998 page 3079

Dialogue With the OSC

The Ontario Securities Commission's annual investment industry forum "Dialogue with the OSC" will be held on November 3, 1998 at the Westin Harbour Castle in Toronto. The conference brings together OSC staff with members of the financial community to discuss established priorities to the Year 2000.

For more information, call **Monica Zeller**, Communications Officer, (416) 593-8120.

OSC Launches Web Site

The OSC'S web site — *www.osc.gov.on.ca* — is now up and running on the World Wide Web. The site features information about the OSC, investor education, rules and regulation, enforcement, and market participants.

For more information, call **Monica Zeller**, Communications Officer, (416) 593-8120.

International Securities Commissions' Organization: Discussion Papers on Aspects of Securities Regulations

Recently, the International Organization of Securities Commissions (IOSCO) announced the release of four documents that are of considerable interest to securities regulators and market participants:

(1) ***Consultation Draft: "Objectives and Principles of Securities Regulation"***

(2) ***International Disclosure Standards for Cross-Border Offerings and Initial Listings by Foreign Issuers (Report of the Technical Committee)***

(3) ***Risk Management and Control Guidance for Securities Firms and their Supervisors (Report of the Technical Committee)***

(4) ***Methodologies for Determining Minimum Capital Standards for Internationally Active Securities Firms (Report of the Technical Committee)***

A more detailed notice regarding these four documents was published in the Ontario Securities Commission Bulletin on July 3, 1998. All papers are accessible on the IOSCO Web site (http://www.iosco.org). Send any comments directly to Mr. E. Canadell, Secretary General, International Organization of Securities Commissions (IOSCO), P.O. Box 171, Stock Exchange Tower, 800, square Victoria, 42nd Floor, Suite 4210, Montreal, Quebec H4Z 1C8, Fax: (514) 875-2669, e-mail: mail@oicv.iosco.org with a copy to **Randee B. Pavalow**, Policy Coordinator/Advisor and Manager of Advisory Services, Ontario Securities Commission.

For more information, contact **Randee Pavalow** at (416) 593-8257 or **Susan Greenglass**, Legal Counsel, Policy Coordinator, at (416) 593-8140.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada. The principal current initiative of the CSA is the establishment of the mutual reliance system.

CSA Spring Meeting

Held on April 2-3 during the first international Investor Education Week, the CSA's Spring meeting marked progress on a number of securities industry initiatives. Highlights of the CSA's discussions included:

Investor Education Week.
Among other activities organized by members of the CSA, the CSA began distributing an Investor Education Kit, designed to make investors more aware of the risks and rewards of securities investing.

Mutual Funds Self-Regulatory Organization
The CSA anticipates that a new SRO will start accepting members in January 1999. With this initiative and a broader initiative to regulate all Quebec market intermediaries, the CSA expects to reduce the disparity in regulatory supervision between mutual fund distributors and securities firms (and individuals) that are members of an existing SRO.

Mutual Reliance.
On June 22, the CSA published for comment the umbrella Memorandum of Understanding that will describe the mutual reliance regime **(see page 1).** The mutual reliance initiative involves the development of a regime for the review of prospectuses, the registration of advisers and SRO member dealers, and the processing of exemption applications in multiple jurisdictions (*see* Perspectives, Winter 1998).

New Mining Standards.
On July 3 the CSA published for comment NI 43.101 (Standards of Disclosure for Exploration, Development and Mining Properties) It will replace and broaden existing National Policies 2-A and 22. (See Feature, cover page).

Information Technology Initiatives.
The CSA discussed the recommendations of a technology needs assessment by Coopers & Lybrand. The CSA has begun preparing a Request for Proposal for an insider trading system **(see page 3).** The CSA also agreed in principle to have staff assess the feasibility of creating a national electronic data base compatible with the registration systems of CSA members, to meet the needs of both regulators and SROs.

Year 2000.
On January 30, 1998, the CSA published a staff notice regarding the Year 2000 issue. During the CSA meeting, several members noted that their staff will review Year 2000 disclosure of any prospectuses or continuous disclosure documents selected for review. The CSA also reviewed other steps taken by members regarding Year 2000 preparedness **(see page 2).**

Cooperation with Insurance Regulators.
Representatives of the CSA and the Canadian Council of Insurance Regulators agreed in principle to develop a framework for cooperation and exchange of information on issues of common interest. **(see story page 3).**

For more information, call **Kathy Soden**, Manager, Market Operations, (416) 593-8149.

ENFORCEMENT

The following are summaries of recent enforcement proceedings. For more information, please call Larry Waite, Director of Enforcement, (416) 593-8156.

Frank Mersch and Peter Cunti
(Deliberately misleading Staff of the Commission (Public Interest (s. 127))

Mersch was an employee, director and officer of Altamira Investment Management Ltd. ("Altamira") and the Portfolio Manager of Altamira Account #31, the Altamira Equity Fund.

In or about February of 1993, Mersch was told that an opportunity existed to participate in a private placement being carried out by Rutherford Ventures Corp., subsequently known as Diamond Fields Resources Inc. In February and March of 1993, an investment dealer in British Columbia took steps to secure a private British Columbia corporation known as Dass No. 25 Holdings Ltd. for Mersch through which the investment in Diamond Fields would be made.

Pursuant to the private placement, Mersch caused Dass to purchase 25,000 units of Diamond Fields at a cost of $0.15 per unit. On or about May 19, 1993, Mersch bought 190,000 units of Diamond Fields for Altamira Account #31 at a cost of $2.85 per unit.

On March 6, 1997, Mersch gave an oral statement to staff of the Ontario Securities Commission in which he said that Peter Cunti had, from early 1993, been responsible for taking the necessary steps to cause Dass to invest in Diamond Fields. In fact, Cunti had no direct involvement with Dass until March 1994. Mersch deliberately misled OSC staff as to the timing of Cunti's involvement with Dass.

Mersch admitted that his conduct was contrary to the public interest and agreed to a six-month prohibition from applying for registration under the *Securities Act*. Mersch's registration was automatically suspended on May 7, 1998, when he resigned his position with Altamira.

Alexis Fortuna-St. John, Antonia Storm-St. John and Phoenix Head Enterprises of Canada
(Trading in securities without being registered (Public Interest (s. 127)))

Alexis Fortuna-St. John of Kingsville, Ontario, operated a sole proprietorship, Phoenix Head Enterprises of Canada. Neither St. John nor Phoenix Head was ever registered with the Commission.

The Commission found that, from January 1 to August 31, 1996, St. John caused Phoenix Head to receive investments from between 800 and 1,000 individuals, amounting to over $3.8 million. The agreement between Phoenix Head and investors provided that the amounts deposited by the investor would be invested in Canadian stocks and the investor would be entitled to receive, on notice to Phoenix Head, the greater of (a) the amount invested plus interest at 10 percent per annum or (b) the value of the investor's account at the time repayment was sought, in each case less the Phoenix Head management fee.

Contrary to this agreement, St. John advanced, out of the money provided to Phoenix Head by investors, approximately $375,000 to firms or corporations in which she or a member of her family had an interest. Only $3,000 of this amount was repaid. The Commission also found that approximately $2 million advanced to Phoenix Head by investors had disappeared, without a credible explanation as to what happened to the money.

On learning that staff of the Commission was investigating her affairs and those of Phoenix Head, St. John attempted to conceal her activities and to falsify records being delivered to the Commission. She sought the cooperation of some investors in backdating contracts which purported, incorrectly, to describe the agreements between Phoenix Head and investors as loans. She also sought the cooperation of investors to destroy documents to frustrate the ability of the Commission to investigate her affairs and those of Phoenix Head. Further, account statements given by Phoenix Head to investors were found to be complete fabrications, showing purchases of shares which had never been made.

The Commission found that St. John's conduct was objectionable and violated the *Securities Act*, resulting in substantial losses to persons who had trusted her with their savings. It also involved attempts to induce others to destroy evidence and otherwise act improperly. The Commission concluded that St. John was not a person who could be safely trusted to participate in the capital markets in any way and, accordingly, ordered that she cease trading in any securities permanently.

The Commission made no order with respect to Antonia Storm-St. John.

Mary Dawn Davy, Ahsan Khan and Mark Miller
(Misleading advertising and marketing materials. (Public Interest (s. 127)))

On March 31, 1998, the Commission approved settlement agreements reached between staff of the Commission and Mary Dawn Davy, Ahsan Khan and Mark Miller.

· Davy agreed that her conduct was contrary to the public interest in that she distributed a book on financial planning to clients which named her as the sole co-author along with Dean Albrecht, a financial marketing consultant resident in the state of Florida. Davy was aware that others had been named as co-authors in different versions of the same book.

Khan and Miller agreed that their conduct was contrary to the public interest in that they each distributed a book on financial planning to existing and potential clients which could have misrepresented their status as the sole co-author along with Dean Albrecht.

Under the terms of the settlement agreement with Davy, she agreed to an order suspending her registration for ten days commencing April 6, 1998. Under the terms of the settlement agreements with Khan and Miller, they each agreed to an order suspending their registration for ten days commencing April 1, 1998. Each respondent further agreed to contribute $1,500 towards the costs of staff's investigation.

Call-Net Enterprises Inc. and Fonorola Inc.
(Application to cease trade shareholder rights plan (Public Interest (s.127)))

On May 28, 1998, the Commission delivered oral reasons with respect to an application by Call-Net Enterprises Inc. for an order cease trading the shareholder rights plan of Fonorola Inc. The Commission also gave reasons with respect to an application by Fonorola for an amendment to Call-Net's offer relating to allegations of improper disclosure.

The Commission found that the improprieties alleged of the Fonorola Board of Directors by Call-Net were not supported by the evidence given at the hearing. The Commission also found that the Board understood its fiduciary duty to the company's shareholders and was carrying that duty out.

The Commission also found that there was a reasonable and substantial possibility that a third party offer for Fonorola would be forthcoming. On this basis, the Commission held that the rights plan could remain in effect until June 26, 1998, to allow Fonorola a reasonable opportunity to solicit competing bids. However, should a Call-Net offer be outstanding at June 26, 1998, and the rights plan still be in place with respect to that offer, then an order would be made cease trading the rights plan.

With respect to Fonorola's application for an amendment to the Call-Net offer regarding allegations of improper disclosure, the Commission expressed the preliminary view that none of the matters alleged would likely affect any decision by Fonorola's shareholders to accept or reject the offer but that, if necessary, the matter could be brought back before the Commission for a final determination.

While no third party offer materialized, Call-Net subsequently increased its offer and this revised offer was accepted by Fonorola's shareholders.

CW Shareholdings Inc., Shaw Communications Inc., Shaw Acquisitions Inc. and WIC Western International Communications Ltd.
(Application to cease trade shareholder rights plan and application to cease trade bid for shares pending removal of pre-acquisition agreement (Public Interest s.144) and Revocation or variation of decision (s. 144)))

On April 8, 1998, the Ontario, British Columbia and Alberta Securities Commissions convened a joint hearing to consider an application by CW Shareholdings Inc. for a cease trading order with respect to the shareholder's rights plan adopted by WIC Western International Communications Ltd. on March 30, 1998. On April 9, 1998, the Commissions held that, unless the rights plan ceased to be in effect with respect to CW's offer for WIC by April 20, 1998, an order cease trading the rights plan would be issued on April 21, 1998.

On April 20, 1998, CW applied to the Commissions for cease trading orders with respect to the bid by Shaw Communications Inc. and Shaw Acquisition Inc. for WIC Class B non-voting shares pending the removal of the option and break-up fee provisions of a pre-acquisition agreement between Shaw and WIC. The pre-acquisition agreement gave Shaw the option on WIC's radio broadcasting business. CW also applied for an order revoking the order exempting Shaw from complying with the pre-bid integration requirements provided for in the Securities Act.

At the hearing of the applications, the Commissions held that their primary concern in the context of take-over bids was the protection of the interests of shareholders in the target company. In the case of WIC's shareholders, it was not in the public interest to cease trade the Shaw bid and leave only the lower CW bid outstanding, with little prospect of a third party offer forthcoming. In the circumstances of the case, the Commissions also declined to exercise their jurisdiction to set aside the pre-acquisition agreement between Shaw and WIC. Accordingly, the Commissions stayed the cease trade applications.

With respect to the application to vary the exemption order, the Commissions held that there was no evidence to support the allegation that material facts were not brought to the attention of the Commission panel granting the exemption order and no evidence to support a finding that the Shaw bid discriminated against CW as holder of WIC Class B shares. Accordingly, the application was dismissed. For more information contact **Cathy Singer**, General Counsel, (416) 595-8082

YBM Magnex International Inc.
(Order that trading in securities cease. (Public Interest (s.127)))

On May 13, 1998, the Commission issued a temporary cease trading order with respect to trading in the securities of YBM Magnex International Inc. A Notice of Hearing and accompanying statement of Staff's allegations was issued on May 26, 1998. The hearing was adjourned to August 19, 1998. The temporary cease trading order remains in effect until the hearing is concluded.

David A. Brown Speaks on Mutual Fund Industry

Following are excerpts from the remarks of David A. Brown, OSC Chair, at the Infonex Conference "Managing Mutual Funds: Performance, Operations and Compliance" on July 6, 1998.

The Ontario Securities Commission and the Mutual Funds Industry: Milestones and Challenges for Mutual Funds in the Coming Years

Fuelled by the longest and seemingly strongest bull market in history, the mutual fund securities markets have enjoyed unprecedented growth. But cracks are starting to appear. Compliance examiners have found serious deficiencies in record keeping, supervision and trust accounts. Although inadvertence constitutes the vast majority of the deficiencies, there are alarming incidents of deliberate fraud by persons licensed to sell mutual funds. Our great fear as regulators is that the bull market has papered over many serious cracks that won't become apparent until the bull market reverses. At the present time, we do not have the tools to cope with a serious market reversal. Nor would we have answers for investors whose savings comprise these billions of dollars as to why their retirement dreams may have been lost ...

"I consider it my responsibility to bring some vigour to this exercise, to energize my agency and those who will be working with us."

While much has been accomplished in mutual fund regulatory reform, there remains much to be done. In this respect, there is a clear path of development for these changes to come: the development in the next year of the SRO for mutual fund dealers, the implementation of new rules over the next two years, improved standards of prospectus disclosure, control of franchising to ensure dealer accountability for salespeople, the development of a coordinating mechanism between securities and insurance regulators, the emphasis on improved corporate governance of mutual funds, tackling issues of major consequence such as the Year 2000 challenge, and the regulation of financial planning activities; all of these issues are on our agenda. What's more, that agenda will be backed up by the people and resources to carry it through and to enhance the ongoing activities of compliance and enforcement.

I consider it my responsibility to bring some vigour to this exercise, to energize my agency and those who will be working with us on these important initiatives, to ensure that the milestones continue to be met, and to account to our clients, investors and capital market participants, on our progress.

(Setting New Standards, continued from cover)

3. New independent reporting. The report recommends expanding the "trigger" for an independent technical report to include when an issuer: becomes a reporting issuer in each CSA jurisdiction; files a listing application; reports resources or reserves on a material property for the first time; and reports a cumulative 100% change in independently reported resources and reserves. Current requirements to file independent reports with long form prospectuses and for valuations have been maintained.

"The recommendations aim to reinforce Canada's leadership in the exploration and mining industry."

4. The report also recommends that Canadian properties be assayed by an accredited Canadian lab.

Other recommendations include:

- that the federal and provincial governments expand their market fraud units;
- that regulatory authorities, stock exchanges, the RCMP and criminal justice officials establish a formal national coordinating mechanism for market fraud;
- that the TSE strengthen its oversight and scrutiny of mineral exploration and mining company operations, disclosure and compliance by forming a listed companies surveillance unit; and
- that the TSE be given specific discretionary authority to require listed companies to obtain independent verification of data.

In addition, on July 3 the CSA published for comment National Instrument 43-101 (Standards of Disclosure for Exploration, Development and Mining Properties), and its companion policy which updates and expands on existing National Policy No. 2-A and National Policy No. 22.

For more information, call **Morley Carscallen**, Vice Chair, OSC, (416) 593-8081 or **Kathy Soden**, Manager, Market Operations, (416) 593-8749, both of whom were members of the Task Force.

21 OSCB July 3, 1998 page 4213
21 OSCB June 12, 1998 page 3661

Perspectives is published quarterly by the Corporate Relations Branch of the Ontario Securities Commission. *Perspectives* welcomes letters to the editor.

If you wish to be on the mailing list for Perspectives, please contact us at:

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ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 1, Issue 4

FALL 1998

Inside...

FEATURE

David Brown on the OSC's New Directions

On November 1, 1997, the OSC was converted to an independent, self-funded Crown Corporation. This means that we became a corporate entity with statutory powers and responsibilities. We can set our own budgets, hire our own personnel, determine our own priorities, with the confidence that, within reason, funding will be available.

Priorities

Our priorities will be to beef up our activities substantially in the areas of enforcement and compliance and to harmonize these activities with securities regulators in other jurisdictions and indeed with the regulators of financial services in general; to ensure that similar financial services and products are regulated in a similar manner regardless of which regulator or SRO is the primary regulator.

So, having given you my vision of the OSC as a robust regulatory organization, what are the issues on our radar screen?

(continued on page 9)

INDEX

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Proposed Changes to Mutual Fund Prospectus Disclosure

To improve the clarity and quality of mutual fund prospectus disclosure, the Canadian Securities Administrators (CSA) have proposed a new National Rule.

At present, mutual funds must provide investors with a simplified prospectus that contains important information about the funds, plus a more detailed Annual Information Form upon request. However, many prospectuses are lengthy and difficult to read, and they vary widely in quality and content.

Under the new system, investors would receive a short and readable fund summary instead of the Simplified Prospectus, and could refer to a detailed fund prospectus and current financial statements for more information.

The fund summary would include:

- Standardized performance information;
- Selected financial highlights instead of full financial statements;
- Examples of the impact on an investor's return of mutual fund purchase costs and fees; and
- A catalogue approach showing all important information about each fund on consecutive pages.

In addition, the summaries would be written in plain language, following the same order of disclosure and the same headings. No additional information could be provided in fund summaries, other than specific educational information. This would ensure that key information would not be obscured by irrelevant data.

"The fund summaries would be written in plain language, following the same order of disclosure and the same headings."

The comment period on the proposal ended October 31. Following any further comment period for any material changes made to the Rule, the Ontario Securities Commission (OSC) must deliver the proposed Rule to the Minister of Finance for a 60-day review and decision. If approved, the Rule will go into effect 15 days after approval by the Minister or on a specified date. The CSA propose that the Rule be made effective July 1, 1999.

For more information, please call **Rebecca Cowdery**, Manager, Market Operations, (416) 593-8129, or **Winfield Liu**, Senior Legal Counsel, Market Operations, (416) 593-8250.

Proposed Mandatory SRO Membership Rules

The OSC has published proposed changes to the proposed rules on Self-Regulatory Organization (SRO) Membership for Mutual Fund Dealers and Securities Dealers and Brokers (Rules 31-506 and 31-507).

Proposed Rule 31-506 requires all mutual fund dealers to become members of an SRO recognized by the Commission. The proposed changes to the Rule would tie the effective date to the date the newly established SRO (the Mutual Fund Dealers Association) is recognized by the OSC. In addition, the effective date for current registrants would be linked to the next date the registrant is required to file financial statements under the *Securities Act*, rather than the registration renewal date.

Proposed Rule 31-507 requires all securities dealers and brokers to be members of an SRO self-regulatory body or stock exchange recognized by the Commission. The proposed changes to the Rule would require brokers that are members of The Toronto Stock Exchange, to become members of the Investment Dealers Association of Canada, which currently is the only SRO recognized by the Commission that carries on general member regulation activities. In addition, the effective date for current registrants would be linked to the next date the registrant is required to file financial statements under the *Securities Act*, rather than the registration renewal date.

For more information, please call **Tanis MacLaren**, Associate General Counsel, (416) 593-8259.

21 OSCB June 19, 1998 page 3875

Permanent Registration Proposed

In order to reduce the administrative burden on registrants the CSA has proposed creating a permanent registration system.

The system would require a registrant to provide the same information that is currently filed to allow the OSC to ensure that continued registration is appropriate, and to help calculate annual fees. However, under the proposed Rule, these materials, the financial statements and the fees would be filed at the same time rather than on three separate dates, as is currently required.

The proposed Rule also would result in any individual registrant's registration being suspended when he or she ceases to be employed by a registered firm or when the firm is suspended. Currently, this applies only to salespersons, while officers' registrations are terminated when they leave the firm and a new registration application is required upon employment with a new firm. An individual's registration may be reinstated once he or she becomes employed by a new firm, or when the firm's license is reinstated. The current two year period during which a suspended license may be reinstated would be shortened to 90 days.

For more information, please call **Registration**, (416) 593-8269.

21 OSCB June 26, 1998 page 4067

Proposed Proficiency Rule

A proposed Rule on Proficiency Requirements for Registrants (Rule 31-502) updates proficiency requirements for a number of participants in the securities industry. For example, it codifies the OSC's practices of accepting certain alternative courses and industry experience for dealers and advisers. It also adopts several of the requirements of the Investment Dealers Association of Canada (IDA) and applies these higher standards to securities dealers.

The OSC has now proposed a number of changes to the proposed Rule. These include:

- Requiring compliance officers to be registered, and thus to have completed the Canadian Securities Course;
- Recognizing the Branch Compliance Officer Course conducted by the Institute of Canadian Bankers for the registration of a mutual fund branch manager;
- Permitting registration for salespersons of brokers and dealers restricted to the sales of mutual fund securities with the same proficiency as mutual fund salespersons;
- Updating the names of course materials;
- Amending the proficiency requirements to reflect current IDA requirements; and
- Establishing time limits during which course and experience proficiencies remain valid for applicants who have been out of the industry.

For more information, please call **Registration,** (416) 593-8269.

21 OSCB August 21, 1998 page 5306

Trades to Employees, Executives and Consultants

As part of the OSC's ongoing rule reformation process, the Commission proposed a new rule for Trades to Employees, Executives and Consultants (rule 45-503), to allow companies to issue stock to employees, executives and consultants without approval by the OSC, under certain conditions. The Rule would incorporate exemptions not covered by current regulations but usually granted in practice.

As a result of comments and further deliberations, the OSC has proposed changes to the proposed Rule. The revised proposed Rule was published on August 21, 1998 (21 OSCB 5268) and then made final on October 6, 1998 (21 OSCB 6569). It is anticipated that the Rule will come into force on December 22, 1998.

For more information, please call **Cynthia Rogers**, Senior Legal Counsel, Market Operations, (416) 593-8261.

Beneficial Securityholder Communication

After receiving a broad range of comments on its proposed National Instrument 54-101 on Communication with Beneficial Owners of Securities of a Reporting Issuer, the CSA have published a number of proposed changes (see *Perspectives*, Spring 1998).

The proposed changes include:

- Redefining the "non-objecting beneficial owner list" to include both an electronic and non-electronic form of the list, instead of just an electronic one.
- Deleting the minimum notice period of eight business days before the record date for notice for a reporting issuer to send a notification of meeting and record dates.
- Deleting the minimum period of five business days before the record date for notice for sending a request for beneficial ownership information to proximate intermediaries.
- Permitting a reporting issuer to override the election of security holders not to receive certain materials.
- Expanding the definition of routine business.
- Amending the fee arrangements so that reporting issuers pay the cost of distribution of securityholder materials to Objecting Beneficial Owners (OBOs) only for distributions to OBOs that declined to receive materials.
- Deleting the section requiring a person or company requesting voting instructions from a beneficial owner to ensure there is no cost to the owner.
- Providing more generous transitional provisions.

For more information, please call **Robert F. Kohl**, Senior Legal Counsel, Market Operations, (416) 593-8233.

21 OSCB July 17, 1998 page 4491

Multijurisdictional Disclosure System

National Instrument 71-101 on the Multijurisdictional Disclosure System (MJDS) came into force in Ontario on November 1, 1998.

The National Instrument, Companion Policy, Rule and Form reformulate the MJDS implemented in 1991 by the CSA and the Securities and Exchange Commission (SEC). The aim of the MJDS is to reduce duplicative regulation in cross-border offerings, issuer bids, takeover bids, business combinations and continuous disclosure and other filings.

The National Instrument is expected to be adopted in all other CSA jurisdictions.

For more information, please call **Randee Pavalow**, Manager, Market Operations, (416) 593-8257.

21 OSCB August 14, 1998 page 5099

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

OSC Proposes Amendments to *Securities Act*

The OSC has proposed changes to both the *Securities Act* and the *Commodity Futures Act* as candidate items to be included in a proposed Fall 1998 Red Tape Bill.

Red Tape legislation aims to eliminate obsolete provisions, increase government efficiency, improve customer service and facilitate harmonization with other jurisdictions. The changes proposed to the *Securities Act* were selected to meet these criteria or are technical in nature.

Most of the proposed amendments to the *Commodity Futures Act* seek to update that Act by incorporating the changes that have been made to the Securities Act since 1994, such as those relating to self-regulatory organizations, enforcement and rule-making.

For more information, please call **Tanis MacLaren**, Associate General Counsel, (416) 593-8259, **Margo Paul**, Senior Legal Counsel, Market Operations, (416) 593-8136, or **Tracey Stern**, Legal Counsel, Market Operations, (416) 593-8167.

21 OSCB August 14, 1998 page 5149

New General Counsel Named

The OSC announced that Susan Wolburgh-Jenah will assume the role of General Counsel when Cathy Singer leaves at the end of her secondment in December. Susan has been with the Commission for 15 years and has held positions in the Commodities Futures Branch, the Legal Advisor's Office, Corporate Finance and most recently as Manager of Filings Team One in the Market Operations Branch.

Dialogue with the OSC

The OSC held its fourth annual conference at the Westin Harbour Castle Conference Centre in Toronto on November 3, 1998. Approximately 300 industry participants and media attended the conference. OSC staff addressed a number of priorities, including investment funds regulatory reform, registrant regulation, electronic trading, the Internet and market fragmentation, enforcement, mutual reliance among Canadian securities regulators, the secondary market, investor education and the Year 2000.

If you were unable to attend the conference, a conference binder containing remarks and material submitted by speakers may be purchased for $80 from the Ellis Riley Group at (416) 593-7352.

Update on Year 2000 Initiatives

On October 21, the CSA hosted an industry-wide conference on the Year 2000 in Toronto. Over 300 professionals attended. Presentations were made by the CSA and the Canadian Exchanges, as well as industry groups.

Among the subjects covered at the conference were:

National Instrument 33-106: Year 2000 Preparation Reporting (the "National Instrument") was made by the OSC and came into force in Ontario on October 16, 1998. The substance and purpose of the National Instrument are to impose requirements on registered firms to file information with the regulator relating to their preparations for the Year 2000 Problem. A "Year 2000 Problem" is defined in the rule to include any problems arising from any of the following: (a) computer software incorrectly reading the date "01/01/00" as being the year 1900 or another incorrect year; (b) computer software incorrectly identifying a date in the year 1999 or any year thereafter; (c) computer software failing to detect that the year 2000 is a leap year; (d) any other computer software error that is directly or indirectly caused by the problems set out in (a), (b) or (c) above. A "registered firm" is a registrant that is registered as a dealer, adviser or underwriter, but does not include an individual.

The rule requires a registered firm to file by October 31, 1998 an initial Year 2000 Survey as to its preparations for the Year 2000 Problem, with information current to September 30, 1998. In addition, a registered firm is required to file on four different dates a Year 2000 Management Certificate as to the progress of its preparations for the Year 2000 Problem.

A registered firm may fulfil its obligations under the National Instrument by filing the required material with a specified self-regulatory organization (SRO) of which it is a member, provided that the SRO notifies the registered firm in writing that the SRO will file the information with the regulator.

Filings are to be made electronically in portable document format (PDF). To assist registrants, both the Year 2000 Survey and the Year 2000 Management Certificate can be downloaded in WordPerfect 6.1 and Word 6.0 formats from the OSC's Year 2000 web site page (at *www.osc.gov.on.ca*). Copies of the filings will be available for public inspection in accordance with Canadian securities legislation and will be posted on the web sites of certain CSA jurisdictions, including the OSC.

The National Instrument was developed by the CSA, in co-operation with the IDA. In addition, the CSA studied new rules of the Securities and Exchange Commission (SEC) requiring broker-dealers, investment advisers and certain transfer agents to file reports disclosing their Year 2000 preparations.

The National Instrument was made under the urgency provision of the *Securities Act*, which allows the Commission to make a rule without the required notice and public comment period. The OSC concluded there was an urgent need for the National Instrument and that without it, there would have been a substantial risk of harm to the integrity of the capital markets.

Infrastructure Participants Y2K Reporting: As one of the objectives of the CSA in addressing the Year 2000 Problem is to identify, monitor and/or assess the Year 2000 remediation efforts of the securities industry as a whole, a group of 31 "key market participants" was identified by the CSA. Key market participants are considered to be crucial links within the Canadian capital markets system. They include the stock exchanges, clearing entities, securities and mutual fund service providers, information providers, CIPF, the Bank of Canada and the Canadian Payments Association (CPA). These key market participants were sent a questionnaire on their Year 2000 preparations. The questionnaire, which requires more detail on Year 2000 preparations than the National Instrument's Survey and Management Certificate, must be filed by November 15, 1998 for information as of September 30, 1998. It is required to be updated and re-filed by January 31, 1999 (for information as of December 31, 1998), by April 30, 1999 (for information as of March 31, 1999) and by July 31, 1999 (for information as of June 30, 1999).

Industry-Wide Testing and Contingency Planning: A cornerstone of the OSC's Year 2000 initiatives will be to ensure that meaningful industry-wide testing and contingency plans are developed by the securities industry. The OSC, on behalf of the CSA, has assumed a leadership role in working with various members of the Canadian subgroup of the G-30 in developing and implementing industry-wide Year 2000 testing planned for June 1999. Separate testing task forces for the securities and mutual fund industries have been meeting regularly to develop the parameters of such testing.

"The OSC and other CSA jurisdictions may consider a rule mandating participation in such industry-wide tests."

The OSC and other CSA jurisdictions may consider a rule mandating participation in such industry-wide tests, and are also considering measures to restrict the participation in the securities markets to those market participants who have satisfied certain testing (eg., point-to-point) and contingency planning requirements.

Reporting Issuers' Year 2000 Disclosure Review Program: The OSC and other CSA jurisdictions recently completed a review of Year 2000 disclosure in continuous disclosure and prospectuses. A CSA joint report on the findings of the review program is expected to be published in the near future.

For more information, please call **Maxime Paré,** Legal Counsel, Market Operations, (416) 593-3650 or **Levi Sankar,** Legal Counsel, Market Operations, (416) 593-8279.

Livent Inc. Cease Trade Order

Effective 12 noon EST on November 20, 1998, the OSC lifted the Cease Trade Order on the securities of Livent Inc., following the filing by Livent of its restated 1996 and 1997 audited financial statements, restated 1996 and 1997 MD&A, and restated Q1 1998 financial statements. Livent also filed its Q2 1998 financial statements.

In addition, Livent issued a news release detailing the nature and the extent of the irregularities initially disclosed on August 10, 1998 and discussion of its current affairs and financial condition.

For more information, please call **Kathy Soden**, Manager, Market Operations (416) 593-8149.

Investment Counsel and Portfolio Managers

The OSC and the SEC issued a joint letter summarizing some violations found as a result of their joint compliance examinations of six selected investment counsel and portfolio managers registered with both regulators.

The letter, published in the OSC Bulletin on August 28, 1998, lists issues in several key areas: duty to disclose; trade allocations; advertising representations to clients; performance; personal trading; advisory agreements; referral arrangements; constructive custody of client assets; and recidivism. The intent of the letter is to educate investment counsel and portfolio managers in order to minimize future violations and to encourage compliance with the Securities Laws.

The OSC Compliance Team will continue performing examinations of investment counsel and portfolio managers, with the goal of reviewing each adviser registered with the OSC at least once every five years.

For more information, please call **Toni Ferrari**, Manager, Market Operations, (416) 593-3692.

21 OSCB August 28, 1998 page 5587

MacKay Task Force on Financial Services Sector

The MacKay Task Force on the Future of the Canadian Financial Services Sector offers 124 recommendations, focusing on four broad themes: enhancing competition and competitiveness; empowering consumers; Canadians' expectations and corporate conduct; and improving the regulatory framework.

Among key individual recommendations were:

- A legislated privacy regime that will assure consumer protection of sensitive personal information;
- A stronger and broader ban on coercive tied selling;
- A dedicated ombudsman for the financial sector;
- Clearer information on fees and commissions;
- Better assurance of basic banking services for low-income Canadians;

- Improving the disclosure given to customers;
- Direct access to the payments system for life insurance companies, mutual funds and investment dealers;
- Permitting banks and trust companies to offer insurance and leasing through branches;
- Allowing foreign banks to operate in Canada through branches and new opportunities for foreign firms to make loans to Canadians;
- New powers for credit unions and credit union centrals, including the power to become or form cooperative banks;
- Making it easier to start new banks;
- Integration of deposit insurance for banks and compensation plans of life insurance companies;
- Strengthening the Office of the Superintendent of Financial Institutions' governance structure and transferring the regulatory responsibilities of the Canada Deposit Insurance Corporation to OSFI.

Many of the Task Force's observations and recommendations reinforce the OSC's views, particularly in the area of empowering consumers and improving the regulatory framework. (see page 9)

The report can be accessed at *finservtaskforce.fin.gc.ca*. For more information, call 1-888-288-8006.

List of Documents Required For Mutual Reliance

Following the publication in June of the proposed National Policy Statement on the Mutual Reliance Review System for Prospectuses and Initial AIFs (NP 43-201), the CSA have issued lists of the material to be filed under the new system.

Some changes to the materials required have been made arising from the filing of documents through SEDAR and changes in legislation and administrative practices.

For more information, please call **Rose Fergusson**, (416) 593-8116.

21 OSCB August 7, 1998 page 4987

Rules Seminars for Securities Lawyers

A series of seminars on the reformulation of Ontario's securities laws, aimed at bringing securities professionals up to speed on the new rules, instruments and policies was organized by legal practitioners in private practice in concert with the OSC and Insight Conferences. The seminars took place over four days in November and December.

For more information, contact **Insight Information Customer Service** at (416) 777-2020.

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

Venard Joseph Gaudet Patrick Anthony Chesnutt, Paul Marion Cohen, and Osler Inc.

On July 3, 1998, Venard Joseph Gaudet ("Gaudet"), Patrick Anthony Chesnutt ("Chesnutt"), and Paul Marion Cohen ("Cohen") were each convicted on a total of 105 charges under the *Securities Act*. The charges arose as a result of their conduct when they were the principal shareholders and senior officers of the now defunct brokerage firm, Osler Inc. His Honour Judge Bernard N. Kelly sentenced each of the accused to a period of four years in jail to be served concurrently with the sentences they received from their convictions for offences under the Criminal Code of Canada. Osler Inc. was also found guilty of 105 charges under the *Securities Act* and was fined $25,000 per count for a total of $2,625,000.

In December 1987, The Toronto Stock Exchange was notified by Osler Inc. of its failure to maintain the minimum level of regulatory capital required for the brokerage firm and the Ontario Securities Commission initiated an investigation into the matter. In December 1988, charges were laid under the Provincial Offences Act against five former employees of Osler Inc. and the Commission issued Notices of Hearing in respect of activities at Osler Inc.

The sentencing of Gaudet, Chesnutt and Cohen brought the Enforcement Branch's investigation and prosecution in the Osler matter to an end. The above result not only sets a precedent in terms of the length of the sentence and the amount of the fine, but also sends a very important message about the significance of compliance with the self-reporting rules imposed by securities regulators.

Peter Cunti

(misleading Commission staff (public interest (s.127)))

On August 8, 1998, the Ontario Securities Commission approved a settlement agreement entered into between Peter Cunti and staff of the Commission in respect of allegations that Mr. Cunti deliberately misled them in the course of an investigation.

The investigation concerned the true ownership of a private British Columbia corporation that invested in Rutherford Ventures Corp., which later became Diamond Fields Resources Inc. In the settlement agreement, Mr. Cunti admitted that he had in fact deliberately misled Commission staff, and that his conduct in doing so was contrary to the public interest. Mr. Cunti agreed to, and the Commission imposed, a two-year removal of the trading and other exemptions provided for under the *Securities Act*.

Belteco Holdings Inc., Torvalon Corporation, Gary Salter, Elaine Salter, Peter Arthur Mitchell, Rodika Florika,

Glen Erikson, Christine Erikson, Kai Hoesslin, Harcourt Wilshire, 921159 Ontario Inc., and 918211 Ontario Inc.
(public interest (s. 127))

In a decision released on September 30, 1998, the Ontario Securities Commission concluded that Glen Erikson, Christine Erikson, Peter Mitchell and others, participated in and facilitated a number of serious violations of the Securities Act and knowingly participated in a series of transactions involving the securities of Belteco Holdings Inc. and Torvalon Corporation which were "manipulative, deceptive and unconscionably abusive of the capital markets".

The relevant transactions were found to have been designed to create a number of tradeable shares among a control group. From within the control group, the participants then transferred the shares to two broker-dealers. The broker-dealers, in turn, sold the shares to members of the public at marked-up prices. The "scheme" was described as one "which was clearly designed to place securities in the hands of investors at prices which did not reflect their real value".

The Commission concluded that the activities in question constituted a carefully prepared scheme which was designed to profit the participants, whether or not the speculative businesses of the companies proved to be successful. Further, it was designed to improperly take advantage of every possible exemption available under the *Securities Act* to reduce expenses while at the same time, providing practically no information on the public record as to the likelihood of success of the companies.

The Commission's ruling makes it clear that the Commission will censure registered representatives, securities lawyers, and others, where their actions facilitate an abusive scheme, or otherwise amount to a serious violation of the Securities Act. Further, the Commission's decision makes it clear that a registered salesperson cannot simply accommodate the wishes of clients, but rather is obliged to, at the very least, make inquiries where circumstances call for same.

YBM International Inc.
(Order that trading in securities cease (public interest (s. 127)))

On August 17, 1998, the Commission ordered that the hearing be adjourned *sine die*, not to be brought back unless and until YBM has filed audited financial statements with the Commission. The temporary cease trading order, originally issued on May 13, 1998, remains in effect until the hearing is concluded.

Koman Info-Link Inc., Koman Investment Inc, Koman Investment Inc. (B.V.I.) ("Koman"), Simon Ko, John Ping Sum Lam and Jose Castenda
(Order that trading in securities cease. (public interest (s. 127)))

On September 22, 1998 the Commission issued an order continuing the temporary Cease Trade Order against the respondents in respect of their conduct in the trading of foreign currencies. In a companion order, the Ontario Court (General Division) has ordered a freeze on funds held in certain bank accounts of Koman.

The Temporary Order states that Koman and Koman Investment Inc. established what purports to be a foreign currency trading operation in Toronto, Ontario. It is alleged that Koman or Koman Investment Inc. represented that client funds deposited with the companies were used to acquire foreign currency contracts in any one of six foreign currencies in units equivalent to approximately $100,000 (USD), as well as gold bullion. The Temporary Order states that Koman represented to clients that it purchased a foreign currency contract in the name of the client and that investments were cleared through Koman Investment Inc. based in the British Virgin Islands or other clearing houses or financial institutions located in Hong Kong or Macau. It is alleged that clients of Koman or Koman Investment Inc. did not take delivery of the currency and that all trades were made for speculative purposes on margin.

Robert Thomislav Adzija, Larry Allen Ayres, David Arthur Bending, Marlene Berry, Douglas Cross, Allan Joseph Dorsey, Allan Eizenga, Guy Fangeat, Richard Jules Fangeat, Michael Hersey, George Edward Holmes, Todd Michael Johnston, Michael Thomas, Peter Kennelly, John Douglas Kirby, Ernest Kiss, Arthur Krick, Frank Alan Latam, Brian Lawrence, Luke John McGee, Ron Masschaele, John Newman, Randall Novak, Normand Riopelle, Robert Louis Rizzuto, and Michael Vaughan("the Respondents")
(trading without a prospectus/exemption (s.53))

On October 14, 1998, the Commission extended a Temporary Order against the Respondents which states that they sold to Ontario investors securities in The Saxton Trading Corp., The Saxton Export Corp. and 37 companies known as Saxton Export (II)Corp. through to Saxton Export (XXXVIII)Corp. Staff alleges that the sale of shares of these corporations was a distribution under Ontario securities law and none of the corporations which offered shares filed a prospectus with the Commission and none of the exemptions from the prospectus requirements of Ontario securities law was available to the corporations. Furthermore, staff also alleges that none of the exemptions from the registration requirements of Ontario securities law was available for the sale of shares of the Offering Corporations.

Kipling Investments Ltd.
(Investor Alert)

On July 23, 1998 the Commission issued an "Investor Alert" on Kipling Investments Ltd., purportedly of Toronto. This alert was prompted by numerous inquiries regarding the activities of Kipling Investments Ltd. soliciting by telephone investors in Malaysia, New Zealand, Singapore, Taiwan, Thailand and possibly the Philippines. The alert advised that Kipling Investments Ltd. is not a registrant under the *Securities Act* and cautioned investors to be vigilant when responding to telephone solicitations for securities transactions when dealing with unfamiliar companies.

This marked the first time the Commission had utilized its new Internet web site, *www.osc.gov.on.ca*, to issue such an alert.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

CSA Summer Meeting

During their summer meeting in Mont-Tremblant, Quebec, the Chairs of the Canadian Securities Administrators reviewed progress on major national policy initiatives.

Key initiatives included:

- Appointing a CSA Year 2000 committee to coordinate initiatives to promote Y2K preparedness in the securities industry (see page 3);
- Requesting staff to develop financial recommendations on alternative trading systems during the summer;
- Directing staff to consider options to clarify the treatment of mutual fund and retirement accounts maintained by securities dealers should a dealer become insolvent.

For more information, please call **Kathy Soden**, Manager, Market Operations, (416) 593-8149.

Canadian Securities Regulatory System

To recognize the enormous strides that the CSA has achieved to harmonize securities administration in Canada, a name to properly describe the system was chosen by the CSA Chairs, the *Canadian Securities Regulatory System*. The CSRS comprises the CSA's Mutual Reliance Review System initiative, the CSA's series of National Instruments and policies and the CSA's harmonization of securities requirements in Canada.

CSA Distribution Structures Committee

The Distribution Structures Committee (the "Committee") was established in 1997 by the Chairs of the Canadian Securities Administrators (the "CSA"). The Committee is made up of staff members from several Commissions and the Chair of the Nova Scotia Securities Commission. The Committee's mandate is to advise the CSA on issues that have arisen due to changes that are occurring in the way that securities firms are structuring themselves for the purposes of distributing securities to the investing public. Consideration is being given to whether the evolution of these structures has created concerns for the integrity and efficacy of the existing regulatory system, and if so, to consider how these concerns can be addressed.

Historically, a dealer marketed and delivered its services through its partners, or its officers and employees. This is the traditional distribution structure with clear reporting lines in place.

"Given the importance placed by securities regulators on principles such as effective supervision, legal responsibility to the client, and access to books and records, these new structures and the resultant increased independence of salespersons give rise to regulatory concerns."

Over the past number of years there has been a widening of the use of new structures such as independent contractors, franchises, and arrangements such as referral fees, and there is pressure from the securities industry to continue to allow the use of non-traditional structures. Given the importance placed by securities regulation on principles such as effective supervision, legal responsibility to the client, and access to books and records, these new structures and the resultant increased independence of salespersons give rise to regulatory concerns.

The Committee is considering whether these alternative structures can replicate the clear lines of responsibility in the traditional employer/employee model and, if they can not, what regulatory response is required to balance the industry's desire for non-traditional structures and the Committee's concerns for investor protection. The Committee is focussing its attention on the implications that the use of these structures has on dealer liability, proper supervision of sales representatives by dealers, dealer capital, insurance and bonding requirements, and record keeping functions. The Committee is considering how, if at all, the regulatory system should be altered.

A Concept Paper canvassing the issues, the regulatory concerns and various possible approaches is being finalized by the Committee. The Paper will be shared with interested groups such as the Mutual Fund Dealers Association, the Canadian Investor Protection Fund, the Investment Dealers Association and the Investment Funds Institute of Canada. Once feedback has been received from these groups and considered by the Committee, the Committee will make its final recommendations to the CSA Chairs.

For more information, please call **Kathy Soden**, Manager, Market Operations, (416) 593-8149, or **Toni Ferrari**, Manager, Market Operations, (416) 593-3692.

Proposed Control Block National Instrument

The Canadian Securities Administrators have proposed three National Instruments (62-101, 62-102, 62-103) based on the Ontario Draft Rule, "The Early Warning System and Related Take-Over Bid, Insider Trading and Control Block Distribution Issues." The National Instruments will regulate essentially the same matters as the Draft Rule, which was published in 1995.

The proposed National Instrument 62-101 on Control Block Distribution Issues has two main purposes:

1) It would set out a limited exemption for eligible institutional investors from the prospectus requirements applicable to control block distributions. The exemption would allow these investors to dispose of securities without being subjected to certain hold periods or disclosure requirements.

2) It would modify the application of hold periods for pledgees disposing of securities that form part of a control block.

The primary purpose of the National Instrument 62-102 on Disclosure of Outstanding Share Data is to ensure reporting issuers provide information to the public of the designation and number or principal amount of their outstanding securities. Reliable disclosure is essential for the purposes of the early warning requirements and the alternative monthly reporting system, contained in proposed National Instrument 62-103.

National Instrument 62-103 – The Early Warning System and Related Take-Over Bid and Insider Reporting Issues modifies the early warning and insider reporting requirements of securities legislation as they apply to passive institutional investors. These investors would be permitted to file reports of their ownership or control of securities of reporting issuers on a less immediate and less frequent basis than other investors. In addition, they would not be required to aggregate all securities owned or controlled by their independent business units.

For more information, please call **Tanis MacLaren**, Associate General Counsel, (416) 593-8259.

21 OSCB September 4, 1998 page 5637

Extension of Testing for National Application System

The CSA have extended testing by law firms of the concept proposal for the National Application System until further notice.

The CSA National Application System Committee has reviewed comments on the concept proposal and reported to the CSA. It is expected a policy for the system, which addressed the comments received and the experience gained through testing, will be published for comment this fall.

For more information, please call **Margo Paul**, Senior Legal Counsel, at (416) 593-8136.

21 OSCB July 3, 1998 page 4163

(OSC's New Directions, continued from cover)

Market Fragmentation and Alternative Trading Systems: The Canadian Context

One of the clear choices is the subject of trading systems which, in Canada, are fragmented and in great danger of becoming even more so. In my view this topic takes on a particular urgency since it is something which the U.S. dealt with over 10 years ago and should have been confronted in Canada long ago.

Electronic trading systems ("ETSs") are screen-based computer systems that automate all or part of the traditional trading process. Over the past decade, the use of ETSs not sponsored by Self Regulatory Organizations ("SROs") ("NETS" – non-SRO sponsored ETSs) has grown significantly in many jurisdictions, particularly in the United States.

On April 23 of this year, a public forum was hosted by the Canadian Securities Administrators ("CSA") to consider this issue. As a result of this work, the CSA have developed a series of proposals for a Canadian ATS system that is currently being discussed with exchanges and other electronic system providers across the country.

Our target is to publish a concept proposal by all CSA members for a Canadian ATS structure sometime this fall.

Changing the Allocation of Regulatory Responsibilities

Also high on our priority list is the need to bring greater efficiencies to the market place. In this respect it is imperative that we come to grips with regulatory overlap, and regulatory gaps. The challenge for us in Canada arises from the division of powers. Securities regulation has been categorized as falling constitutionally under the heading of "property and civil rights in the province", a matter reserved exclusively to the Provinces. Legislative jurisdiction over banks and banking, however, is reserved exclusively to the federal government. Thus the regulatory field is divided along institutional lines, rather than by category of activity or business.

"The split between federal and provincial regulation of financial markets along institutional rather than business or operational lines may no longer be correct."

Unlike the conditions which have traditionally given rise to wholesale regulatory reform, we are fortunate not to be faced with an industry in crisis. Indeed, the existing regulatory structure, shaped largely by market pressures, has enabled our securities industry and capital markets to achieve a size and level of efficiency that, in relative terms, compares well with those prevailing in other mature enterprise economies' capital markets.

As we have witnessed recently, however, there is no room for complacency. The roles of market participants have changed dramatically and the split between federal and provincial regulation of financial markets along institutional rather than business or operational lines may no longer be correct. Despite the dynamic nature of the markets (accelerated by rapid technological development), there has been little concerted effort to evaluate whether the current regulatory structure efficiently achieves its goals.

There is presently a strong case to be made for a new regulatory split which focuses on the activities carried on by financial services players rather than on the entity type. Such a reshuffling of the regulatory deck would permit one type of regulator to focus primarily on prudential concerns while leaving others to concentrate on the regulation of markets and the protection of consumers of financial services.

In The Meantime: The Canadian Securities Regulatory System (CSRS) "Virtual" National Securities Commission

In a regulatory environment such as securities regulation in Canada, featuring as it does 10 separate securities regulators (12 including the two territories), one must be particularly concerned about the potential for regulatory fragmentation of what is, essentially, one capital market.

The CSA have negotiated a Memorandum of Understanding amongst themselves with the intention that the Mutual Reliance Review System will be fully operational in 1999. In the meantime, on a voluntary basis, many filers are using the new system to enable us to test our systems and work out the bugs.

Financial Planning and Advisory Services: The Financial Industry's Changing Focus

The need for accelerating the pace of rationalizing regulatory jurisdictions is highlighted by the changes occurring around the provision of financial planning and advisory services. The financial services industry as a whole is shifting away from its primary role as a provider of financial products and is replacing this source of revenue with advisory services.

In the midst of this sea-change in the approach to financial services, a competitive tension has developed over the issue of accreditation. Providing financial planning services has become an important competitive objective, and each industry group wants to make sure that it can advertise its advisers as the most qualified. No sector wants to assume a greater cost of training financial planners than its competitors, or to meet a higher standard.

These developments have important implications for our regulatory regime. Simply put, our current regime has not kept pace with these industry changes. The high level of investor reliance invited by all who provide financial planning advice must be matched by an equivalent level of responsibility for the quality, transparency and objectivity of that advice. Our regulatory approaches at the Commission, at the SRO level and in other, related, regulatory systems, must ensure that this is the case.

Investment Funds

The distributors of mutual funds are not subject to the same standards as others involved in the sale and distribution of securities. These factors led my predecessor and his colleagues in the CSA to embark on one of the most interesting, and certainly most challenging and controversial, of our initiatives in the mutual funds field. That was to cajole the IDA (the existing securities dealer SRO) and the Investment Funds Institute of Canada (the existing investment funds trade association) into a joint venture to form a new mutual fund dealer's SRO.

Progress is being made. Working committees of the new SRO are formulating rules and designing an investor protection fund. We expect that all mutual fund dealers will be members of a fully-functioning SRO by the end of 1999 or soon thereafter.

Another significant initiative in the investment funds area is the simplification of prospectus disclosure. The CSA is now considering comments received on its new, simplified prospectus system designed to give investors essential information about prospective fund investments in a readable and understandable form (see page 1).

Year 2000 Initiatives

The first of the major policy issues that I wish to highlight is one which should concern all of us and is truly in the "last but not least" category. That is the Year 2000 Problem.

To date the Commission's strategy on the Year 2000 has consisted of three main components: raising awareness, providing guidance, and monitoring the progress of initiatives among market participants. This emphasis must now change.

At this point, the focus of Year 2000 efforts is on testing. Market participants must now move into the testing phase. The Commission is committed to encouraging Year 2000 testing and taking prompt remedial action to deal with any deficiencies revealed through the testing process or otherwise.

New Directions Within the Commission

Our first priority has been to bring our salary structure in line with the market place to protect the strong team of people we already have at the OSC and to enable us to supplement their skills with additional talent. It has already been reported that we intend to increase our staff complement by more than 50% over the next 12 to 18 months.

Many of the resources will be deployed in the Compliance and Enforcement areas of the Commission. On the compliance side we will be focussing particularly on monitoring and enforcing compliance with continuous disclosure obligations of reporting issuers. A team within the Market Operations Branch is being formed with this specific mandate. This heavy emphasis on compliance will inevitably generate more cases for review by the Enforcement Branch. In all, we expect approximately 40 new people with a wide range of skills to be hired in the Enforcement Branch over the next 18 months.

While on the topic of Enforcement, we have requested the Government to grant us additional powers to help us carry out our mandate. In particular, we have asked for the ability to prohibit individuals who have breached securities laws from serving as directors or officers of corporations. We have also requested the power to assess unsuccessful respondents for the costs of investigations and the costs of the hearing process, a power already utilized by the British Columbia and Alberta Securities Commissions.

"We intend to increase our staff complement by more than 50% over the next 12 to 18 months."

Staff of the Commission have also started to make much more use of the interim powers found in Section 127 of the Act in situations where there is prima facie evidence of a breach of securities laws. Two interim cease trading orders have been issued in the past few months and I think you will see much greater resort to these powers where the Commission believes that interim restrictions are necessary to protect the public from ongoing harm during the investigatory and hearing process.

Returning to the subject of resource allocation, we are currently creating a new take-over bid team in which much of the take-over bid expertise of the Commission will be located. We are also reorganizing the Office of the General Counsel and reformulating its mandate to focus more directly on providing legal resources to the Commission Executive and staff.

And in Closing....

It is my hope, when my successor arrives to take up his or her duties several years hence, that he or she will be stepping into an agency which does what it sets out to do; an agency which is renowned as one of the world's preeminent regulators, an agency that creates and aggressively enforces clear and unambiguous rules, an agency seen as effectively protecting investors while ensuring efficient capital markets for compliant users.

Ours is an ambitious agenda but one which is realistic and, I am firmly convinced, is achievable.

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Ontario Securities Commission

PERSPECTIVES

Volume 2, Issue 2

Spring 1999

inside...

FEATURE

Update on Take Overs/M&As

On January 18, 1999, the OSC created a new Take Over/Issuer Bids, Mergers & Acquisitions team within the Corporate Finance Branch. The work of the new team previously was carried out in the General Counsel's Office.

"In the longer term, the M&A team will be focusing on the need for legislative reform."

The Commission believes a specialized, transactional and policy team is necessary given the significant volume of M&A activity and the need for expert and timely regulatory oversights in this area.

The following reviews the core functions of the team, its key projects for the future, and significant developments since it was created:

- administering Part XX of the Securities Act dealing with take over/issuer bids and, in particular, reviewing and considering s.104 applications and making recommendations to the Commission regarding the appropriate exercise of discretion in respect of such applications;
- processing applications for relief, where warranted, under OSC Policy 9.1;

(continued on page 10)

INDEX

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Mutual Fund Rules

The Canadian Securities Administrators (CSA) has published a Notice of Proposed Changes to proposed National Instrument and Companion Policy on Mutual Funds (NI 81-102 and 81-102CP). The changes are based in part on comments received after the National Instrument was published for the first time in 1997. The proposed National Instrument and Companion Policy are a reformulation of National Policy Statement No. 39.

The Notice, published in a special OSC Bulletin on March 19 (22 OSCB (Supp)), summarizes the changes. One change involves permitting mutual funds to directly use swaps, as suggested in comments received by the CSA. However, the CSA proposes that several significant issues raised during the comment period be addressed in a parallel process to allow for sufficient public comment and industry consultation. The CSA intends to publish proposed rules late in 1999 or 2000 as amending instruments to the National Instrument.

Among the issues to be addressed in this way are: securities lending by mutual funds and the use of repurchase agreements; a standardized regime for the structure of so-called "funds of funds"; timing of transfers among financial institutions and among mutual funds; principal trading in securities between mutual funds and entities related to the manager of the mutual funds; acquisition of securities by mutual funds from underwriters related to the mutual fund manager; and inter-fund trading of securities.

For more information, please call **Rebecca Cowdery**, **Manager, Investment Funds**, (416) 593-8129, or **Paul Dempsey**, **Legal Counsel**, (416) 593-8091.

22 OSCB March 19 Special Issue

Mutual Fund Prospectus Disclosure

A revised draft of the proposed National Instrument 81-101 on Mutual Fund Prospectus Disclosure has been issued for industry and public comment. It incorporates a number of changes made in response to extensive industry testing, consumer research and public comment.

In addition to receiving general comments on the original proposed National Instrument published for comment in July 1998, the CSA obtained specific consumer input in a number of innovative ways. The CSA worked with the Investment Funds Institute of Canada (IFIC) and six mutual fund companies to test market the fund summary concept. IFIC also engaged a research company to assess whether the proposed disclosure concept met the needs of investors. As well, the OSC engaged another research company to conduct a series of focus groups with mutual fund investors.

The CSA also took into account three significant publications released during the comment period – The MacKay Task Force Report on the future of the Canadian Financial Services Sector, the Kirby Report on the Governance Practices of Institutional Investors and Investment Funds in Canada and Consumer Protection Strategies for the Millennium.

The CSA is proposing a number of changes in the new Notice. Among the key changes:

In order to continue to use current terminology, the terms "fund summary" and "fund prospectus" used in the 1998 materials have been replaced with the terms "simplified prospectus" and "annual information form".

The annual information form should provide disclosure about different matters than the simplified prospectus, such as information concerning the internal operations of the manager of the mutual fund. This approach responds to consumer research comments that fund prospectuses (now annual information forms) may not receive wide distribution, and that it was therefore unnecessary to restructure the existing AIF to accommodate wide circulation. As well, it was noted that investors would not read documents that appear to repeat information.

A number of changes have been made reflecting concerns that the proposed fund summary would be too long for investors if it covered a number of funds. The proposed National Instrument therefore includes several structural changes:

1) **Formal division of a Simplified Prospectus into two parts**. Under the 1998 Draft Instrument and Draft Forms, a fund summary would contain a section on general information about mutual funds and the mutual fund family, and a fund-specific section describing each mutual fund. This concept has been continued, with the terminology changed to make the distinction clearer. Under the proposed National Instrument, a simplified prospectus consists of two sections. Part A provides introductory information about the mutual fund, general information about mutual funds and information applicable to the mutual funds managed by the mutual fund organization. Part B contains specific information about the mutual fund.

2) **Clarification that a Simplified Prospectus and Annual Information Form pertain to only one mutual fund**. The proposed National Instrument and Simplified Prospectus Form now make clear that a simplified prospectus pertains to one mutual fund and use the term "multiple Simplified Prospectus" to refer to a document that contains more than one simplified prospectus.

3) **Consolidation of Simplified Prospectuses**. A simplified prospectus could be consolidated with one or more simplified prospectuses to form a "multiple Simplified Prospectus" unless the Part A section, the general information section, of each simplified prospectus is not substantially similar. This option would be available generally to mutual funds in the same family that are administered by the same entities and operated in the same manner.

4) **Permission to Package Multiple Simplified Prospectuses to Better Meet Investors' Needs.** The Part B section of a multiple Simplified Prospectus could be bound separately from the Part A section, as could each Part B section that pertains to a different mutual fund. This would permit an investor to receive a Part A section that describes the mutual fund family and organization generally, and only the Part B section or sections (fund-specific disclosure) that relate to the mutual fund or funds in which the investor is interested.

5) **Clarification of Delivery Obligations.** A mutual fund can meet its obligations to deliver a prospectus by delivering the Part A section of the multiple simplified prospectus and the Part B section that pertains to the mutual fund being purchased.

6) **Flexibility.** A number of changes have been made to the proposed National Instrument and Forms to ensure that mutual fund organizations have the flexibility to create documents that are accessible and easily-read and understood by investors.

For more information, please call **Rebecca Cowdery, Manager, Investment Funds**, (416) 593-8129, or **Anne Ramsay, Accountant**, (416) 593-8243.

22 OSCB April 30, page 2605

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

OSC Issues 1999/2000 Statement of Priorities

The OSC has published its annual Statement of Priorities.

The previous year, 1998/1999, was the Commission's first full year of operation funded through fees collected from market participants. During that period, the OSC restructured its operations, creating Capital Markets and Corporate Finance branches with new organizational units focused on markets regulation, investment funds, continuous disclosure and mergers and acquisitions. The Commission also increased staffing to fulfill its mandate.

The Commission will continue to recruit aggressively in the 1999/2000 fiscal year, committing its resources to the following key priorities:

- Provide leadership in readying the capital markets for Y2K; support industry testing and contingency plan development; perform follow up reviews of registrant and issuer disclosure programs.
- Significantly increase resources in Capital Markets, Corporate Finance and Enforcement to provide additional focus on monitoring of compliance with disclosure requirements by market participants and increased emphasis on case assessment, investigations and enforcement.
- Lead initiatives to redefine the mandates and activities of all Canadian regulators of financial service providers. Contribute to increased coordination of financial services regulation within Ontario through participation in Ontario Council of Financial Regulators.
- In conjunction with CSA partners address issues arising from the proposed restructuring of Canadian exchanges.
- Provide an effective regulatory regime for existing, alternative, and emerging trading systems including the Internet.
- Complete fee review with CSA partners and begin to implement restructured fees to bring revenues and costs into closer alignment,
- Support the establishment and recognition of the Mutual Funds Dealers Association and seek regulatory options to improve the governance of mutual funds.
- Participate actively in international organizations (e.g. IOSCO) to represent Ontario during the development of regulatory standards and approaches related to international capital markets.
- Propose reforms of prospectus and continuous disclosure requirements for mutual funds.
- Develop proficiency standards for financial planning and rules for implementation. For more information, please call **Mary Spencer, Director, Corporate Services**, (416) 593-8185 or **Robert Day, Manager, Business Planning and Reporting**, (416) 593-8179.

22 OSCB April 9, page 2131

New Securities Advisory Committee Members

In March, the OSC invited applications for positions on the Securities Advisory Committee (SAC). SAC provides advice to the Commission and staff on a variety of matters including legislative and policy initiatives, important capital markets trends, and identifies issues that are of importance to the Commission and staff.

Eleven new members will join the Committee this year. The new members who will be joining immediately are: **Connie Sugiyama, Mark DesLauriers, Patricia Olasker, Simon Romano, Grant Vingoe.**

Other new members will join in October in order to stagger the start dates and ensure a smooth transition. They are: **Jeffrey Kerbel, Paul Mingay, Ava Yaskiel, Ralph Shay, Jay Lefton, David McIntyre.**

Through SAC, the Commission will also be accessing the expertise of Linda Currie at Osler, Hoskin & Harcourt and John Hall of Borden & Elliot, where investment fund matters are referred to SAC.

The existing members of SAC will continue to serve on the Committee until October. They are: **Jonathan Lampe (Chairman), Richard Balfour, Craig Brod, Scott Freeman, Michael J. Lang, Margaret McNee, Michael C. Nicholas, Richard S. Sutin.**

The Commission thanks the current members of SAC for their dedication, advice and guidance over a number of years.

For more information, please call **Susan Wolburgh Jenah, General Counsel**, (416) 593-8245.

22 OSCB March 12, page 1607

OSC Reduces Fees

In keeping with its mandate for receiving self-funding status, the Ontario Securities Commission will implement a 10% across-the-board reduction in all fees which it charges to capital markets participants as of August 3, 1999.

When it became self-funding, the OSC pledged to reduce fees to a level which would bring revenues and expenditures into equilibrium. This will happen in stages and is to be complete by the end of 2001.

The 10% across-the-board fee reduction is the second step towards that end. The first step was the elimination effective September 1st, 1997, of the Secondary Market Fee and the fee for certain registration terminations and transfers which accounted for $2 million per annum in revenue reduction. Consequently, the net revenue generated for 1998/99 was $76.3 million against total OSC expenditures of $33.3 million. In addition to its capital and operating expenditures, the OSC set aside $7.5 million in a reserve fund.

The OSC is also currently developing and implementing a completely re-engineered fee schedule. In developing the new schedule, the OSC will address a range of issues including:

- better fee harmonization with other Canadian securities regulators;
- recognition of the concepts of Principal Regulator and Mutual Reliance;
- better alignment between fees charged and OSC expenditures. This will mean developing linkages between fees charged and "attributable overhead costs", for example Enforcement, Compliance, Take Over Bid Team, Inquiries Group etc.; and
- ensuring, to the extent possible, that each stakeholder, that is investors, issuers, and registrants, is paying a fair share of the costs.

For more information, please call **Mark Conacher, Director, Corporate Relations**, (416) 593-8073.

22 OSCB May 7, page 2804

IOSCO Hedge Funds Task Force

The OSC's Chair, David Brown, is leading an international regulatory task force examining regulatory issues relating to hedge funds.

The financial difficulties experienced in 1998 by Long Term Capital Management, a prominent hedge fund, have prompted regulators to consider whether there are any regulatory gaps relating to hedge funds and highly leveraged institutions. In response, the Technical Committee of the International Organization of Securities Commissions (IOSCO) formed a special Task Force, chaired by Mr. Brown. The Task Force includes representatives from 13 countries.

The Task Force is examining whether there is a need for enhanced internal control standards and risk management for securities firms, how to address the need for international regulatory consensus on these issues, how to deal with regulatory "haven" jurisdictions, and whether, and if so how, hedge funds should be subject to direct regulation.

The Task Force is scheduled to submit its report to the Technical Committee shortly.

For more information, please call **Tanis MacLaren, Special Advisor to the Chair**, (416) 593-8259, or **Tracey Stern, Legal Counsel**, (416) 593-8167

Investor Education Week Summary

Between April 25 – May 1, securities regulators in North, Central and South America marked the Second Annual Investor Education Week. Along with other Canadian Securities Administrators, Ontario observed two themes – Risk Factors Affecting Your Investments, and Teaching Our Children.

Among the week's events:

- the CSA released a Canada-wide survey on investor knowledge and behaviour;
- the OSC participated with investor associations, the Investor Learning Centre of Canada, and other community-based organizations such as public libraries, to present seminars in Niagara Falls, Markham, Ottawa and Toronto. This initiative will continue all year as the Commission conducts more regional investor outreach.
- seventeen staff volunteers went "back to school," teaming with TSE and IFIC representatives to present the Junior Achievement's Personal Economics course to grade seven students.
- Charlie Macfarlane, Executive Director and CEO of the OSC, led a student team in a Money Challenge competition at the TSE's Investor Fair Day;
- A website *www.yourmoney.ca* is designed to attract ongoing student "visits."

The Ontario campaign involved several organizations including: the Investment Dealers Association, the Canadian Securities Institute, the Investor Learning Centre of Canada, The Toronto Stock Exchange, the Canadian Investor Protection Fund, the Canadian Depository for Securities, the Investment Funds Institute of Canada, the Canadian Bankers Association, and the Institute of Canadian Bankers. The OSC also welcomed the participation in Investor Education Week activities by Junior Achievement of Toronto and York Region, the Toronto Board of Trade, the Small Investor Protection Association, and public libraries in Toronto and Niagara Falls.

For more information, please call **Nancy Stow, Manager, Investor Education**, (416) 593-8297.

Westlinks Resources

In April, Westlinks Resources Ltd. announced a controversial proposal to simultaneously pursue 40 hostile take over

bids. Although the proposal was withdrawn a few days after being announced, staff of the Ontario and Alberta Securities Commissions issued comments on the proposal because of market interest, and to clarify their views for other companies which might emulate the proposal.

The staff noted that under the plan, shareholders would have no idea what assets Westlinks would be composed of nor what value a Westlinks share would have upon completion of the offer. The staffs' view was that the proposal was structurally flawed for failing to recognize this fundamental concern. As well, they noted, given that concern, it would have been inappropriate to require 40 target companies to respond to this takeover bid.

Staff also commented that there are more appropriate ways to create a closed-end investment fund. They noted that through a prospectus with mutual fund-like disclosure, one can seek to raise funds to pursue a well-defined investment strategy, run by qualified portfolio managers.

For more information, please call **Stan Magidson, Director Take Over Bids, Mergers & Acquisitions Team** (416) 593-8124.

22 OSCB April 23, page 2404

The British Columbia Securities Commission & Global Securities Corporation

In July 1998, the British Columbia Court of Appeal struck down a section of the British Columbia Securities Act that authorizes the British Columbia Securities Commission to issue orders requiring the production of information or documents to assist regulators in other jurisdictions in the administration of their securities laws. The British Columbia Securities Commission sought and was granted leave to appeal the decision of the British Columbia Court of Appeal to the Supreme Court of Canada.

The Ontario Securities Commission has filed an application for leave to intervene in this matter in support of the British Columbia Securities Commission, on a number of grounds. In particular, the Ontario Securities Commission is seeking intervener status because it regards a similar section of its Securities Act as important to regulators in today's globalized markets, where information and funds move instantly across borders by means of the Internet and other electronic communication systems. Recently the Alberta Securities Commission also sought leave to intervene in this matter.

The Ontario Securities Commission expects to hear shortly whether its application for leave to intervene will be allowed by the Court.

For more information, please call **Susan Wolburgh Jenah, General Counsel**, (416) 593-8245.

OSC Creates Continuous Disclosure Team

As part of its commitment to increase resources as the market demands, the OSC has created a separate Continuous Disclosure team. The new team will be dedicated solely to handling continuous disclosure matters, in recognition of the increased activity in continuous disclosure in the market.

The OSC believes that the regulatory system should reflect the recent evolution in the capital markets. With the dramatic rise in secondary market trading, there should be a decreasing emphasis on episodic, transactional disclosure with a greater emphasis on an issuer's continuous disclosure base. Continued movement towards the implementation of an integrated disclosure system is consistent with the market reality that more and more investors are making investment decisions based on an issuer's continuous disclosure record.

For more information, please call **Heidi Franken, Manager, Disclosure Team** (416) 593-8249.

OSC Publishes Insider Reporting Guide

In order to improve the timeliness and quality of insider trade reporting, the OSC is publishing its first-ever Insider Reporting Guide.

The Guide sets out in plain English the requirements for Insider Reporting, including when and what transactions insiders must report, where and how reports should be filed, a step-by-step guide to completing the form, requirements for different securities and transactions, and common filing errors.

The Commission based the Guide on a similar work by the BC Securities Commission. The OSC believes that by helping insiders better understand the requirements under Ontario securities law, the Guide will encourage compliance and reduce errors and omissions in reporting.

Insiders are advised to comply with the reporting requirements to avoid possible enforcement consequences. It is imperative therefore that insiders take this obligation seriously.

The Guide will be available on the OSC website at *www.osc.gov.on.ca* or by calling (416) 593-3699.

For more information, please call **Paul De Souza**, (416) 593-8295.

"Know Your Client" Rule Under Scrutiny

A committee of discount brokers has asked regulators to eliminate the "Know Your Client" suitability rule for unsolicited trades. In a joint submission filed last October, the brokers say removing the rule would speed up some transactions,

cut costs, and level the playing field with US brokers not subject to a suitability rule. The OSC intends to look at this issue as part of the CSA's broad review of regulation. In considering this matter, regulators would balance issues such as the increasing sophistication of some investors, the growth of electronic trading, and the need to protect investors and ensure they are receiving appropriate advice.

For more information, please call **Randee Pavalow, Manager, Market Regulation**, (416) 593-8257.

Changes to Exempt Market Proposed

Following the 1999 Ontario Budget, the Ontario Securities Commission issued for public comment a concept paper, "Revamping the Regulation of the Exempt Market."

Ontario securities law allows two methods by which securities can be offered for sale: through a prospectus or by private placement. In the past a number of issuers, investors and their advisers have called for reform of the private placement regime. They have regarded it as unduly restrictive and, in some respects, unworkable.

Staff of the Commission, expanding upon the work of the Commission-appointed Task Force on Small Business Financing, are proposing an overall revamping of the regulation of the exempt market that would streamline the regulatory regime for private placements.

Four of the exemptions from the requirement for a prospectus – the private company exemption, the $150,000 exemption, the seed capital exemption and the government incentive security exemption – would be replaced with two new exemptions:

(1) The Closely-Held Issuer Exemption - This exemption would permit issuers to raise a total of $3 million, through any number of financings, from up to 35 investors without concern for the qualifications of the investors. No prospectus or other disclosure document would be mandated and issuers relying upon this exemption would be subject to very few securities regulatory requirements.

(2) The Accredited Investor Exemption - This exemption would permit issuers to raise any amount at any time from certain classes of investors (including prescribed institutions, persons and corporations with a certain net worth and the issuer's management) on the basis that these qualified persons and entities should be considered sophisticated and able to withstand financial loss. No offering memorandum or other disclosure document would be mandated, although it is contemplated that civil liability of a lesser standard than that imposed on prospectus offerings would apply to selling documents voluntarily delivered to accredited investors.

The proposal also includes a recommendation that only the issuer and its directors and officers be permitted to trade in securities of a closely-held issuer. Dealers would not be permitted to trade.

A registration exemption for trades in reliance upon the accredited investor exemption would be awarded to the issuer, its directors and officers, as well as dealers, subject to proficiency and capital adequacy requirements.

The concept paper appears on the OSC's Website at *www.osc.gov.on.ca* and was published in the OSC Bulletin on May 7, 1999. Interested parties are encouraged to provide written comments to the Commission by August 6, 1999.

For more information, please call **Margo Paul, Manager, Filing Team 1,** (416) 593-8136, **Janet Holmes, Sr. Legal Counsel,** (416) 593-8282, or **James McVicar, Legal Counsel**, (416) 593-8154.

22 OSCB May 7, page 2829

Bond Market Transparency

In order to establish broader market transparency in the government and corporate debt market, the OSC will review the status of transparency in bond trading.

At present there is a joint initiative of the Investment Dealers Association of Canada (IDA) and the Interdealer Brokers Association (IDBA) of Canada for a voluntary arrangement among IDA members and members of the IDBA to bring CanPX Corporation into operation in order to enhance the visibility of trading information.

The OSC will assess the voluntary CanPX arrangement to ensure that it promotes transparency and benefits both investors and issuers.

For more information, please call **Howard I. Wetston, Q.C., Vice-Chair**, (416) 593-8206 or **Randee Pavalow, Manager, Market Regulation**, (416) 593-8257.

22 OSCB April 16, page 2261

SEDAR Amendments

The CSA has proposed amendments to National Instrument 13-101 on SEDAR (System for Electronic Document Analysis and Retrieval) as well as to the SEDAR Filer Manual. Among the key changes:

- The SEDAR Filer Manual currently permits electronic filing of documents in several different file formats, including specific versions of Corel WordPerfect, Microsoft Word and PDF format (Portable Document Format). Because filings made in these formats often cannot be viewed correctly, it is proposed to require all electronic filings to be made in PDF format only. This likely would become effective in the summer of 1999.

"It is proposed to require all electronic filings to be made in PDF format."

- The SEDAR Instrument came into force on January 1, 1997. Shortly afterwards, the Commission adopted National Instrument 14-101 on Definitions, which contains definitions of commonly used terms as well as various interpretive provisions. The proposed amendments to the SEDAR Instrument eliminate certain definitions and other items contained in the Definitions Instrument because they are no longer needed in the SEDAR Instrument.

- Another proposed change would incorporate by reference the most recent version of the Filer Manual in the SEDAR Instrument to avoid the need to amend the Instrument each time a new version of the Manual is released.

For more information, please call **Karen Eby, SEDAR Project**, (416) 593-8242

22 OSCB Feb. 26, page 1279

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is comprised of the thirteen securities regulators of the provinces and territories of Canada.

Spring Meeting in Toronto

At its Spring meeting in Toronto, the CSA agreed to form a staff committee to review the stock exchange restructuring plan announced in March to ensure that investors' interests are protected. The plan calls for The Toronto Stock Exchange to become Canada's only senior equities market; the Montreal Exchange to specialize in derivative investment products; and the Vancouver and Alberta stock exchanges to create a Canadian junior equities market.

During the meeting, the CSA Chairs also approved a strategic plan covering 1999-2001. One element of the plan is implementing a system for existing, alternative and emerging trading systems. The Chairs reviewed the progress made on developing a framework for the regulation of trading systems, including ATSs, in the Canadian capital markets. Proposed rules, policies and other materials on the proposed framework will be published this summer.

For more information, please call **Kathleen Finlay, Manager, Project Office,** (416) 593-8125.

Y2K Update: Securities Industry Testing Successful

As part of their commitment to assisting the capital markets in preparing for Y2K, the Canadian Securities Administrators has moved forward on a number of initiatives.

"If we were grading the industry, we would have to give them full marks." **David Brown**

- The CSA has published the first in a series of newsletters updating market participants on Year 2000 issues and events. The first issue of the newsletter reviewed testing, contingency planning initiatives, enforcement action, website reporting and other topics.
- May 28–June 10. The securities industry successfully completed testing on a variety of transactions, including trading, order entry, settlement, clearance and validation processes. For more information about the tests, visit the Y2K pages on the OSC website at *www.osc.gov.on.ca.*

- The Canadian securities regulators are stepping up their review of Year 2000 disclosure by reporting companies, following the CSA staff Report published in January. As part of its review, staff in several commissions are reviewing selected annual information forms or similar documents. As well, staff will monitor the filings of some of the reporting companies that were the subject of the original Year 2000 disclosure review report.

- The CSA issued a news release calling for contingency planning by market participants. The release noted that the CSA "is prepared to take regulatory action to avert or minimize disruption to the operation of the Canadian capital markets if it becomes evident that a market participant will not be in a position to operate smoothly at the turn of the century." Planning efforts by participants will complement the work of the CSA-led industry task force created in November 1998.

For more information, please call **Mark Conacher, Director, Corporate Relations** (416) 593-8073 or **Randee Pavalow, Manager, Market Regulation,** (416) 593-8257

Study Compares Seg Funds and Mutual Funds

The CSA and the Canadian Council of Insurance Regulators (CCIR) have issued a report comparing the regulation and structure of segregated funds and mutual funds.

The CSA regulates mutual funds and the CCIR regulates individual variable insurance contracts (IVICs) and the segregated funds which determine the value of an IVIC. Both seg and mutual funds are collective or pooled investments offering similar opportunities to investors.

The study is a first step towards harmonizing the CSA's and CCIR's regulatory regimes and offering similar investor protections for these similar products. A joint regulatory/industry working group prepared the report, which features an extensive comparative table.

The table compares the products':

- Legal form and structure, operators and service providers;
- Governing regulation and their central regulators, as well as the governing regulation and the central regulators of their operators and service providers;
- The rights of purchasers;
- Their method of marketing and disclosure to purchasers; and
- The manner in which they are distributed to purchasers.

The study is available on the OSC website *www.osc.gov.on.ca,* or for more information, please call **Rebecca Cowdery, Manager, Investment Funds**, (416) 593-8129

22 OSCB May 7, page 2761

CSA Supports MFDA

To support the start-up of the Mutual Fund Dealers Association (MFDA), self-funded members of the CSA – the Alberta, British Columbia and Ontario Securities Commissions – are guaranteeing a line of credit of up to $12 million to carry it through until it begins generating its own revenue.

The CSA (other than Quebec) has also agreed to make rules that will require all mutual fund dealers and securities dealers to join a recognized self-regulatory organization (SRO).

"The three commissions have agreed to guarantee the MFDA's indebtedness under its credit facility."

The CSA believes that regulation of the mutual fund industry must keep pace with its importance to the Canadian financial market and to Canadians. A crucial aspect of mutual fund regulation is to ensure that those who sell mutual funds to the public have appropriate licences to conduct such activity and are held to appropriate standards of proficiency, solvency and sales practices. The dramatic increase in the numbers of mutual fund dealers and salespersons has made it literally impossible for the securities regulators to perform reviews of the financial affairs and of the sales practices of mutual fund dealers on a regular basis.

The CSA members believe that industry self-regulation is necessary in order to maintain proper conduct of mutual fund distributors and to ensure that investors' confidence in mutual fund investing is not misplaced. The CSA has been working with the Investment Dealers Association of Canada and the Investment Funds Institute of Canada since early 1997 to facilitate the establishment of a self-regulatory organization for distributors of mutual funds in Canada. The establishment of the MFDA is the culmination of that work.

CSA staff are participating in the rule-making committees of the MFDA to ensure that appropriate consideration is given to regulatory concerns related to mutual fund distribution.

For more information, please call **Rebecca Cowdery, Manager, Investment Funds**, (416) 593-8129.

22 OSCB April 9, page 2133

Financial Planning

The CSA hopes to publish for comment a draft rule on financial planning minimum proficiency by the end of July. This rule will be accompanied by an interpretive notice indicating the intended scope of the rule and how the transitional grandfathering decisions will be made for all registrants.

The draft rule would require any registrant who wants to offer financial planning or other comprehensive integrated financial advice relating to an individual's present and future financial circumstances to pass a common examination and to meet supervised experience requirements. The common exam is being developed under the aegis of an industry group representing a cross section of financial sector product and service providers and industry educators. It is comprised of the CEOs of the Investment Dealers Association of Canada, the Investment Funds Institute of Canada, the Canadian Bankers Association and the Canadian Association of Insurance and Financial Advisors.

The common exam is now in the early stages of development by a consultant working directly with industry educators following an accepted scientific process for the design of exams to test expertise. As the process moves to the stage of exam question design and testing, participation from the wider financial planning community will be necessary to ensure that the exam is appropriate in difficulty, focus and pass/fail level.

The industry group is preparing joint papers on collateral continuing education, supervised experience requirements and practice standards which will provide input for the CSA in determining grandfathering criteria.

The Financial Services Commission of Ontario is coordinating a national approach among insurance sector regulators to implement the common exam requirements in cooperation with the CSA with the exception of Quebec, where financial planning is already regulated.

For more information, please call **Julia Dublin, Senior Legal Counsel, General Counsel's Office**, (416) 593-8103.

Joint Forum of Financial Market Regulators

Representatives of Canada's securities, insurance and pension regulators are working together to eliminate gaps among their systems of regulating financial products and services in Canada. Key areas targeted for review are the regulation of segregated funds and mutual funds, distribution structures, financial planning and information sharing.

The Joint Forum was formed in January to discuss issues of common interest among Canadian securities, insurance and pension regulators arising from the growing integration of the financial services sector.

The Joint Forum reviewed a comparative study of segregated fund and mutual fund regulation done by a task force of representatives of the Canadian Securities Administrators, the Canadian Council of Insurance Regulators and the insurance and mutual fund industries (see page 6). The Joint Forum agreed to work to improve the respective regulation of segregated funds and mutual funds in the Canadian financial markets to enhance consumer protection.

The Joint Forum of Financial Market Regulators includes representatives of the Canadian Securities Administrators, the Canadian Council of Insurance Regulators and the Canadian Association of Pension Supervisory Authorities. The mandate of the Joint Forum is to coordinate and streamline the regulation of products and services in the Canadian financial markets.

For more information, please call **Kathleen Finlay, Manager, Project Office**, (416) 593-8125.

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information please call the OSC at (416) 593-8314.

John Felderhof & Bre-X Minerals Ltd.

Charges laid for insider trading and misleading press releases

On May 11, 1999, Commission Enforcement staff laid an Information in the Ontario Court of Justice against John Bernard Felderhof, the former Vice-Chairman of Bre-X Minerals Ltd., charging Felderhof with eight counts of violating Ontario securities law.

Four counts in the Information allege that, in the period April 24, 1996 to September 10, 1996, Felderhof sold approximately 2,720,500 shares of Bre-X for approximately $83.9 million with knowledge of a material fact pertaining to rights of Bre-X in relation to the Busang properties that had not been generally disclosed (also known as "insider trading").

A further four counts in the Information allege that in the period June 20, 1996 to February 17, 1997, Felderhof authorized, permitted or acquiesced in Bre-X issuing press releases containing resource calculations for the Central and Southeast Zones of the Busang properties that in a material respect were misleading or untrue, contrary to section 122 of the Ontario Securities Act. As a strict liability offence, these charges do not require the Commission to prove whether Felderhof knew the resource calculations were misleading or untrue.

Mr. Felderhof (or his counsel or agent) will be required to appear before the Ontario Court of Justice at the Old City Hall, Toronto, Ontario at 9:00 a.m. on June 15, 1999 and thereafter as required by the Court.

Steve Stavro, Brian Bellmore, J. Donald Crump and Maple Leaf Sports & Entertainment Ltd.

Settlement reached for failure to provide adequate disclosure.

The Ontario Securities Commission (the "Commission") announced on March 29, 1999 that it had approved a settlement reached by staff of the Commission in a proceeding brought against Maple Leaf Sports & Entertainment Ltd. (formerly Maple Leaf Gardens, Limited), Steve A. Stavro, Brian P. Bellmore and J. Donald Crump.

During the period in question, Maple Leaf Gardens Ltd. was a reporting issuer with the estate of the late Harold Ballard holding a controlling interest. Steve Stavro, in addition to being the executor of Mr. Ballard's estate, was the Chief Executive Officer, a director and a member of the executive committee. In 1991, Mr. Stavro was granted permission to acquire the estate's interest in Maple Leaf Gardens Ltd. Brian Bellmore and J. Donald Crump were also director's and members of the executive committee. Maple Leaf Gardens Ventures Ltd., a private company, was created in 1994 for the purpose of acquiring Maple Leaf Gardens Ltd. Mr. Stavro controlled 51 percent of Maple Leaf Gardens Ventures.

Staff of the Commission had alleged that the Offering Circular and Directors' Circular issued in connection with the takeover of Maple Leaf Gardens, Limited in April of 1994 were deficient. In the Statement of Facts accompanying the Settlement Agreement, it was agreed that the respondents had been aware of the potential for a significant increase in television revenues. During the takeover, the respondents failed to comment on a valuation method used for calculating these revenues in meetings held with the firms retained to set a valuation for the takeover. The valuation method used by these firms had resulted in a substantially more conservative projection of revenues.

Under the terms of the settlement, Maple Leaf Sports & Entertainment Ltd. will pay a total of $1.6 million to the Commission. Of that, $1.1 million will be allocated by the Commission to third parties to be used for purposes that will benefit investors in Ontario. The Commission has not yet determined the purposes to which the funds will be applied. The remaining $500,000 represents a contribution towards the costs of staff's investigation of this matter. The corporation was also reprimanded by the Commission. In addition, Messrs. Stavro, Bellmore and Crump have agreed, for a period of 18 months, not to act as a director of a reporting issuer without prior approval of the Commission.

In approving the settlement, Vice-Chair Howard Wetston, speaking for a three-Commissioner panel, noted that the mandate of the Commission is to protect investors in Ontario and confidence in the integrity of the capital markets. He observed that disclosure is "not simply a question of business process or judgment, but a fundamental underpinning of the regulation of the capital markets." He also noted that they were in a position to ensure, but did not, that the disclosure issued in connection with the takeover bid contained information regarding management's expectations about substantial increases in broadcast revenues that were likely to occur.

The Commission held that in a proposed transaction relating to a takeover bid, particularly where the offer is developed by insiders who will become part of the "buy" side of the transaction, there is an obligation to ensure that the disclosure to the buy side is also made to the "sell" side in a fair and complete way.

David Singh, Jeffrey Lipton, Infinity Investment Counsel Ltd.

Suspensions for misleading advertisement following an earlier settlement

On January 12, 1999, Enforcement staff alleged that David Singh, Jeffrey Lipton and Infinity Investment Counsel Ltd. had caused or permitted an investment by two Infinity mutual funds that contravened Ontario securities law and was contrary to the public interest.

On January 19, 1999, the Commission approved a settlement agreement which imposed sanctions upon Mr. Singh, Mr. Lipton and Infinity Investment Counsel. The following day, Infinity Investment Counsel published an advertisement in the business press which made reference to the settlement agreement and the investment which was the subject of the proceeding. By Notice of Hearing and Statement of Allegations issued on February 10, 1999, staff of the Commission alleged that Mr. Singh and Mr. Lipton permitted Infinity Investment Counsel Ltd. to publish that advertisement which contra-

vened both the settlement agreement and the prohibition in National Policy 39 against misleading sales communications.

The allegations against Infinity Investment Counsel and Mr. Singh were resolved by way of settlement agreements approved by the Commission on March 2, 1999. By the terms of those settlement agreements, the registration granted to Mr. Singh under Ontario securities law in respect of Fortune Investment Corporation was suspended for a period of three months and Mr. Singh further agreed to withdraw his application for registration in respect of Fortune Financial Corporation and not to reapply for registration for three months. Infinity Investment Counsel was reprimanded by the Commission.

At the hearing, Mr. Singh gave a statement to the Commission in which he accepted full responsibility for the advertisement and apologized to the Commission and its staff for publication of the advertisement. The Commission indicated that it considered the matter to be one of a most serious nature and an important element in accepting the settlement was that Mr. Singh acknowledged to the Commission that he understood the serious nature of the matter and accepted responsibility for his conduct.

Mr. Lipton entered a settlement agreement with staff which was considered by the Commission on April 23, 1999. In approving the settlement agreement, the Commission ordered that the registration of Mr. Lipton be suspended for one month effective July 1, 1999. This one-month suspension was in addition to a three-month suspension, effective April 1, 1999, imposed by the Commission on January 19, 1999 arising from the earlier proceeding.

James T. Riley

Failure to file insider trades.

On June 1, 1999, the Ontario Securities Commission (the "Commission") issued its decision and reasons in the matter of James T. Riley. In this proceeding which was heard by the Commission on May 27, 1999, staff of the Commission alleged that James T. Riley, a director and the president of York Bay Capital Group Inc., failed to file the reports required by Ontario securities law in respect of his change of ownership of York Bay shares while an insider of that corporation.

The Commission found that Mr. Riley had failed to file reports for 108 purchase or sale transactions contrary to the reporting requirements of the Securities Act.

The Commission determined that a number of mitigating factors were present in Mr. Riley's case including that he made no attempt to conceal his transactions and the fact that he co-operated in the investigation. The Commission determined that the appropriate sanction was to reprimand Mr. Riley.

Einar Bellfield

Charges filed for unregistered activity

The Ontario Securities Commission announced on April 9, 1999 that it has laid charges of trading in securities without being registered in the Ontario Court of Justice (Provincial Division) against Einar Bellfield. The investigation that resulted in the laying of these charges was conducted under the auspices of the Securities Enforcement Review Committee ("SERC"), a committee formed to investigate multi-jurisdictional securities infractions. In particular, this investigation involved the collaboration of the RCMP, the OPP and the Ontario Securities Commission.

On February 5, 1991, the Commission removed Bellfield's exemptions until January 31, 1999. The charges allege that in 1995, Bellfield traded in accounts at three Ontario brokerage firms while the exemptions were not available to him and he was not registered; therefore, it is alleged that he contravened the Securities Act.

Dax Sukhraj

Settlement following failure to honour a representation to Commission staff

On March 11, 1999 the Ontario Securities Commission approved a settlement agreement between Commission staff and Dax Sukhraj and ordered that he be reprimanded for failing to honour a representation made to Commission staff in December 1997. Sukhraj admitted in the agreement that his conduct was contrary to the public interest and that he was aware that Commission staff had relied on his representation.

Sukhraj is an officer, director and majority owner of Keybase Investments Inc., which is registered as a mutual fund dealer under the Securities Act. In the settlement agreement, Sukhraj acknowledged his regret in taking the position that he would not fulfill his representation that Keybase Investments would indemnify three elderly clients. He further noted that, with the benefit of advice and reflection, he caused Keybase Investments to voluntarily enter into an indemnity agreement with the three elderly clients on February 22, 1999.

Both Commission staff and counsel for Sukhraj submitted before the Commission that Sukhraj's recent actions should be considered as a mitigating factor in respect of the Order for a reprimand sought against him.

In approving the settlement agreement, the Commission noted in its Reasons that " . . . [Sukhraj] did provide a clear and unequivocal representation to the staff of the Commission, and that representation was one which he later failed to fulfil. This raises the question of what is the appropriate standard that is expected of a registrant who provides a representation to the staff of the Commission . . . A representation to the Commission cannot, and should not be considered as just a commercial representation."

Tactman Investments (Canada) Inc., and Tanrich Investment Consultant (Overseas) Ltd.

Permanent Cease Trade Order issued

On January 26, 1999, the Ontario Securities Commission (the "Commission") issued an order (the "Order") pursuant to section 127(1) of the Securities Act (the "Act") that all trading in securities, including foreign exchange contracts, issued by Tactman Investments (Canada) Inc. ("Tactman") and Tanrich Investment Consultant (Overseas) Ltd. ("Tanrich") cease permanently. A temporary cease trading order against Tactman and Tanrich had been in place since November 1, 1995 as Tactman and Tanrich were involved in the sale of spot foreign exchange contracts to the public without registration and without filing a prospectus with the Commission. Neither Tactman nor Tanrich appeared at the hearing on January 26, 1999 to oppose the Order.

Glen Harvey Harper, Golden Rule Resources Ltd.
Charges of insider trading laid
The Ontario Securities Commission announced on March 23, 1999 that it had laid charges in the Ontario Court of Justice (Provincial Division) against Glen Harvey Harper, the President, CEO and Chairman of Golden Rule Resources Ltd., including two counts of trading in shares of Golden Rule with knowledge of material facts which were not generally disclosed (also known as "insider trading"). The charges allege that in the period January 3, 1997 to May 6, 1997, Harper sold approximately 424,702 shares for $4,042,469 of Golden Rule, which during the material time was listed and posted for trading on The Toronto Stock Exchange.

Visions Financial Group Inc.
Reprimand issued and conditions imposed after a failure to file audited financial statements
At a hearing on May 13, 1999, the Ontario Securities Commission approved a settlement agreement entered into between staff of the Commission and Visions Financial Group Inc. "Visions", a mutual fund dealer and limited market dealer. In a Notice of Hearing and Statement of Allegations issued on May 3, 1999, staff of the Commission alleged that Visions had failed to deliver its audited financial statements within ninety days of its financial year-end, contrary to Ontario securities law. Visions had previously failed to comply with reporting requirements. The Commission ordered that certain terms and conditions be imposed on Visions' registration, including requirements that Visions deliver monthly financial statements to the Commission, and that it undergo an audit as at June 30, 1999 and report the results of that audit to the Commission. In addition, the Commission reprimanded Visions.

(Update on Take Overs/M&As)

- consulting parties and advising the Commission in respect of s.127 proceedings, particularly in the area of take-over bids, issuer bids and shareholders rights plans;
- engaging in pre-filing discussions with counsel respecting the foregoing;
- handling public inquiries and complaints relating to take-over/issuer bids, going private transactions and related party transactions; and
- serving as a resource to the Commission and staff in respect of related M&A matters.

Service Guidelines and Turnaround
The M&A team recognizes that M&A transactions are time sensitive and therefore frequently require expeditious regulatory review of a transaction or matter. Users of the M&A team's services should keep the following in mind:

- Faxing your application to the Director, Take-over/Issuer Bids, Mergers & Acquisitions, as soon as you are ready to file it formally with the Secretary will enable the team to start analysing your request as soon as possible. The fax number for the M&A team is (416) 593-8177.

The quality and completeness of your application will have an impact on staff's review time. In particular, applications should deal squarely with the issues at hand, and cite relevant precedents where available.

Policy
The M&A team is responsible for policy advice at the Commission in the area of take-over/issuer bids, going private transactions and related party transactions.

At present, the M&A team will be focusing on the replacement of OSC Policy 9.1 with Proposed Rule 61-501 and Proposed Companion Policy 61-501CP (the "Proposed Rule and Policy"). The Proposed Rule and Policy were published for comment on January 22, 1999. Only three comment letters have been received to date. In light of the importance of the Proposed Rule and Policy, the cut-off time for receipt of comment letters has been extended to May 31, 1999.

Pending effectiveness of the Proposed Rule and Policy, staff of the M&A team will continue to administer OSC Policy 9.1. In considering applications for relief under OSC Policy 9.1, staff will consider submissions based on the Proposed Rule and Policy, not as a substitute for, but in addition to, submissions made under OSC Policy 9.1.

In the longer term, the M&A team will be focusing on the need for legislative reform. The last substantial revision of Part XX of the Act occurred in 1987.

Harmonization
M&A transactions frequently know no borders. At the national level, the M&A team is having discussions with staff of the other provincial securities commissions with a view to developing protocols to minimize the regulatory complexity faced by participants in M&A transactions that involve several Canadian provinces.

Monitoring and Compliance
The dedication of resources at the OSC to the M&A area and M&A team, in particular, has allowed the M&A team to commence a pro-active monitoring and compliance program.

"Where non-compliance (with Ontario securities law) is identified follow-up enforcement action could be recommended."

The M&A team regularly reviews press releases, the financial press and other material to determine whether market participants are complying with Ontario securities law and policies. Where non-compliance is identified, follow-up enforcement action could be recommended.

Recent Transactions
Since its creation, the M&A team has been involved in a number of M&A transactions and issues. Among these are:

- Partial Insider Bid for Cambridge Shopping Centres Limited
- AEC Bid for Pacalta and application made by AEC to cease trade a tactical poison pill adopted by Pacalta's board, without shareholder approval, in the face of AEC's bid.
- Westlinks (see article, page 3)

For more information, please call **Stan Magidson, Director Take Over Bids, Mergers & Acquisitions Team** (416) 593-8124

Beyond Product Sales: Considerations Other than the Bottom Line.

Remarks by David A. Brown, OSC Chair

The following excerpts are from a speech delivered by David A. Brown, OSC Chair, at the Canadian Centre for Ethics & Corporate Policy in Toronto on April 1st, 1999.

I want to spend the next 20 minutes discussing the challenges to exacting higher standards of ethical behaviour from those who are in positions of responsibility towards investors, together with some thoughts on what can be done about it....

"As regulators, we become concerned with the growing emphasis in accounting firms on the generation of fees from the sale of consulting services."

Aggressive Accounting Practices
As regulators, we become concerned with the growing emphasis in accounting firms on the generation of fees from the sale of consulting services, in most firms a larger, faster growing source of revenue than fees for conducting the audit. We wonder whether it is becoming increasingly difficult for auditors to say "no" – in the face of pressure both from their clients and their consulting colleagues...

Misrepresentation of Financial Services Being Provided
It is a matter of public record that the CSA is working to establish educational and proficiency standards for individuals who hold themselves out as providing financial planning services. This initiative grew out of our growing concern that people who are essentially product sales persons, are advertising their services as financial planners. Clearly, there is a certain cachet to a mutual fund or securities salesman describing himself as a financial planner. Although potential customers might be more inclined to engage the salesman's services in anticipation of receiving an overall financial plan, the salesman's motivation is much different – to sell more products. By promising to deliver a financial plan, the salesman is inviting reliance by his customers on the implied promise that there will be something more in his recommendations than merely the desire to sell products for which the salesman will receive a commission...

"Clearly, there is a certain cachet to a mutual fund or securities salesman describing himself as a financial planner."

Investor Education Seminars

We have received a number of complaints alleging that securities salespeople have lured potential customers into hearing a sales pitch by offering free investor seminars. Under the guise of educating investors through the opportunity to hear from a celebrity investment guru, investors are induced to associate the investment opportunity being offered by the sponsor of the seminar with the relatively credible reputation of the "independent" lecturer. We have specific rules requiring the disclosure to all participants in such seminars of the identity of their sponsors…

Insider Trading and Selective Disclosure

Finally, I suspect there is no activity which is so destructive of confidence in the market than that of insider trading, more precisely trading on material information that has not been generally disclosed. Everyone would agree that such activity needs to be high on the regulators' enforcement tar-

"There is no activity which is so destructive of confidence in the market than that of insider trading."

get list and, indeed, investigations of trading by insiders apparently possessed of non-public material information comprises a significant part of the work of our Enforcement Branch. Attention has been focused elsewhere recently, however, on a practice which has been dubbed "selective disclosure": the practice of corporate officers discussing corporate affairs during closed conference calls with analysts…

In a recent decision of the Commission, the panel commented on the issue of tipping and the problems raised by selectively disclosing information:

"It would appear that some corporate officers see the maintenance of good relations with analysts as being more important than ensuring equality of material information among shareholders… in general, we view one-on-one discussions between an officer of a reporting issuer and an analyst as being fraught with difficulties."

We now operate in a world where there is tremendous economic significance not only on the access to information but on the timing of such access. Having information a few minutes before it becomes known to the market can be a significant advantage to a recipient – to the detriment of the market.

In its 1997 report on "Responsible Corporate Disclosure" delivered to the TSE, the Allen Committee addressed the issue of selective disclosure. Paragraph 7.12 of the report reads as follows:

"The Committee remains concerned that private meetings with analysts and professional investors have resulted in selective disclosure of information that should have been disclosed on a general basis. Quite apart from any questions of compliance with securities laws, this causes unfairness in the marketplace."

"…We need securities industry leaders to make it clear that strong business values and high ethics are essential to participate in the investment business."

…We need securities industry leaders to make it clear that strong business values and high ethics are essential to participate in the investment business. Reputations, careers, futures and, ultimately, profitability may well turn on ethical conduct. Such conduct must be directed from the top. This calls for a higher standard than mere compliance to the bottom line; mere compliance to the minimum standards prescribed by laws and regulations.

22 OSCB April 9, page 2125

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If you wish to be on the mailing list for *Perspectives*, please contact us at:

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Ontario Securities Commission

PERSPECTIVES

Volume 2, Issue 3

SUMMER 1999

inside...

Alternative Trading Systems

The CSA has proposed a regulatory framework that it believes will allow Alternative Trading Systems to compete with traditional exchanges, without the negative effects of market fragmentation.....1

General Prospectus Requirements

The OSC has published a Notice of Proposed Changes to a proposed Rule on General Prospectus Requirements. 1

Short Form Prospectus Requirements

The CSA has published proposed changes to proposed instruments on the Prompt Offering Qualification System, now called Short Form Prospectus Distributions. 2

CSA Strategic Plan

Harmonizing securities regulation will be a key priority for the Canadian Securities Administrators in the years 1999-2001, according to its recently published Strategic Plan. 5

Distribution Structures

The CSA has published a paper on distribution structures that will have a significant impact on the manner in which certain registrants organize and conduct their business operations. 6

Perspectives, as well as other information about the Ontario Securities Commission, is available on the OSC Web site: *www.osc.gov.on.ca.*

FEATURE

The OSC's Current Agenda: Accounting and Financial Reporting

In a well-publicized recent speech to the annual Business Leaders Luncheon of the Institute of Chartered Accountants of Ontario (available on the OSC Web site at *www.osc.gov.on.ca*), OSC Chair David Brown expressed concern at an apparent erosion of public confidence in audited financial statements. In a period in which public involvement in capital markets has never been so strong, he emphasized how critical it is to maintain confidence in the relevance and reliability of financial information provided by reporting issuers.

The regular provision by reporting issuers of reliable financial information is fundamental to the efficient working of the capital markets. Financial statements are certainly not the only source of information used by investors in making investment decisions, but they continue to be invaluable as an accessible, summarized presentation of an enterprise's financial position and the results of its activities. The annual examination by the auditor plays a crucial role in adding credibility to the overall picture conveyed by those financial statements.

(continued on page 9)

INDEX

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Rule Published on Alternative Trading Systems

In July, the Canadian Securities Administrators (CSA) published proposed rules, policies and other materials that will provide a framework for regulating trading systems, including Alternative Trading Systems (ATSs). The CSA believe that the proposed framework will allow ATSs to compete with traditional exchanges without the negative effects of market fragmentation.

"Most market participants believe the time has come to allow ATSs to compete with traditional exchanges."

ATSs are automated matching systems that bring together orders from buyers and sellers, by using predetermined, established methods or rules under which the orders interact. To date in Canada, ATSs have only been allowed to operate as members of existing exchanges because of concerns about market fragmentation. However, most market participants believe the time has come to allow ATSs to compete with traditional exchanges.

Among the highlights of the proposed regulatory framework is a plan to consolidate traditional marketplaces (exchanges) with new marketplaces (ATSs) to provide a consolidated Canadian market. The consolidation plan provides for the collection, consolidation and dissemination of quote and trade information. The purpose is to integrate all markets to provide buyers and sellers with access to the best price available at the time of execution.

The proposal also provides ATS service providers with a choice as to how they wish to be regulated:

- As an exchange
- As a member of an existing exchange, or
- As a dealer and member of a Self-Regulatory Organization.

Following a period for comment and final approval by CSA members, the final rules will be published. It is anticipated that ATSs will begin to come on stream in Canada by mid-2000.

For more information, please call **Randee Pavalow**, Manager, Market Regulations (416) 593-8257.

22 OSCB July 2 (ATS Supplement)

Rule on General Prospectus Requirements

On July 23, 1999, the OSC published in a special OSC Bulletin a Notice of Proposed Changes to proposed Rule 41-501 General Prospectus Requirements, proposed Companion Policy 41-501 CP General Prospectus Requirements, and proposed Form 41-501F1 Information Required in a Prospectus. The proposed Rule is a local rule that consolidates various provisions currently set forth in the Regulation to the Securities Act (Ontario) and in various policy statements and notices of the OSC and staff concerning the preparation, certification, filing and receipting of preliminary prospectuses and final prospectuses. The changes are based in part on comments received after the long form prospectus instruments were initially published in 1997. In addition, as it is intended that the proposed Rule, Companion Policy and Form parallel, to the extent possible, the substantive provisions of proposed National Instrument 44-101 – Prompt Offering Qualification System, it was decided that these long form instruments would be revised and the comments addressed when the National Instrument was being revised.

Although the proposed Rule is a local rule, staff has sought participation from the other members of the CSA in hopes that the OSC's local rule will be adopted nationally. Attempts have been made to align the proposed Rule and proposed Companion Policy with the consensus views being developed at the CSA level amongst the accountants with respect to financial reporting issues. As a separate but parallel initiative, a committee formed of various members of the CSA is in the process of reviewing and updating the material contained in the OSC Corporate Finance Accountants Practice Manual. As a result of this ongoing CSA harmonization effort, notices regarding the long form prospectus instruments were published for comment in certain other CSA jurisdictions.

"With very few exceptions, the proposed Rule does not distinguish between the preliminary and final prospectus in connection with the age of the financial statements."

Among the most significant changes being proposed are:

- With very few exceptions, the proposed Rule does not distinguish between the preliminary and final prospectus in connection with the age of the financial statements. Interim financial statements must be included for the most recent interim period ended more than 60 days from the date of the prospectus, and annual financial statements must be included for the year(s) ended more than 90 days from the date of the prospectus. These timeframes apply to both the preliminary and final prospectus.

- The financial reporting requirements in the case of guaranteed offerings have been amended to conform to proposed National Instrument 44-101 so that limited relief is provided for issuers where the guarantor owns, directly or indirectly, 100% of the issuer. The concept of a guarantor has also been expanded to a "credit supporter".

"The proposed Form now provides more extensive instructions including an instruction to use simple, clear language and avoid jargon."

- Comments are specifically being requested on a CSA proposal to permit "junior issuers" (an issuer whose revenue, assets, shareholder equity and market capitalization are all less than $5 million) to provide only one year of audited financial results and two years of unaudited results in lieu of three years of audited financial statements.
- The extent of financial statement disclosure for an acquired business is determined on the basis of the significance of the acquisition to the issuer's business. The significance is determined by three tests (asset test, revenue test, net income from continuing operations test) with reference to a sliding scale (similar in principle to the Securities and Exchange Commission's Rule 3-05(b) of Regulation S-X under the Securities Act of 1933). The more "significant" the acquisition is to the issuer, the more historical financial information about the acquired business that is required.
- The proposed Rule permits financial statements of non-Canadian issuers to be prepared in accordance with foreign GAAP if the foreign GAAP is as comprehensive as Canadian GAAP. The notes to the financial statements must include a reconciliation to Canadian GAAP which describes the effect of the material differences that relate to measurement and provides disclosure consistent with Canadian GAAP. Issuers must file a letter from the auditor discussing the auditor's expertise to reconcile foreign GAAP to Canadian GAAP.
- The proposed Rule permits the use of a foreign auditor's report provided the report is accompanied by a statement by the auditor confirming that the auditing standards applied are substantially equivalent to Canadian GAAS and commenting to Canadian readers on any material differences in the form and content of the foreign auditor's report as compared to the Canadian auditor's report. A letter must be filed discussing the auditor's expertise to make the determination that foreign GAAS is substantially equivalent to Canadian GAAS.
- The proposed Rule introduces the ability to do a non-fixed price offering of any securities provided a rating from an "approved rating organization" has been obtained and disclosed.
- Related credit supporters (defined as an affiliate of the issuer) are required to certify the prospectus. Credit supporters that are not related credit supporters are treated under the proposed Rule in essentially the same fashion as other experts and must file a consent.
- Only material contracts that create or materially affect the rights and obligations of holders of the securities being distributed are required to be filed and will be made publicly available by the OSC.
- The proposed Form now provides more extensive instructions including an instruction to use simple, clear language and avoid jargon. The proposed Companion Policy reiterates this instruction and provides guidance regarding plain language principles. The proposed Form requires disclosure of all penalties and sanctions imposed against directors, officers, promoters and controlling shareholders of an issuer or the terms of any settlement agreement entered into by such persons with a regulator subject to a materiality limitation.

For more information, please call **Susan Wolburgh Jenah**, General Counsel (416) 593-8245, **Kathy Soden**, Director, Corporate Finance (416) 593-8149, **Julie Bertoia**, Sr. Accountant (416) 593-8083, or **Rossana Di Lieto**, Legal Counsel (416) 593-8106.

Proposed National Instrument 44-101 and Related Instruments - Short Form Prospectus Distributions

The CSA has published for comment proposed changes to the proposed instruments on the Prompt Offering Qualification System (NI44-101). The new proposed instruments, now called "Short Form Prospectus Distributions", incorporate a number of changes made since the instruments were first published for comment in 1998.

The purpose of the proposed instruments is to reformulate National Policy 47 (NP 47) and to continue to allow issuers to access Canadian capital markets rapidly, while maintaining current levels of investor protection and public disclosure.

Among the most significant changes made to the proposed instruments that were published in 1998 are:

1. **Financial Statement Disclosure for Significant Acquisitions**
   The extent of financial statement disclosure for an acquired business is to be determined on the basis of the significance of the acquisition to the issuer's business. The significance is determined by three tests (asset test, revenue test, net income from continuing operations test) with reference to a sliding scale (similar in principle to the Securities and Exchange Commission's Rule 3-05(b) of Regulation S-X under the Securities Act of 1933. The more "significant" the acquisition is to the issuer, the more historical financial information about the acquired business that is required.

2. **MRRS**
   The anticipated adoption of National Policy 43-201 Mutual Reliance Review System for Prospectuses (MRRS) is reflected.

3. **Renewal AIFs - Definition of "current AIF"**
A renewal AIF will no longer be "accepted for filing". A renewal AIF becomes a "current AIF" upon filing. The requirement that the regulator decide within 10 days of filing whether to review a renewal AIF has been omitted to permit the regulator greater flexibility in determining whether to review an issuer's renewal AIF.

4. **Non-Fixed Price Distributions**
Any type of securities may now be distributed at non-fixed prices, provided that they are rated, rather than only specified types of securities.

5. **Credit Supporters - Certificate or Consent**
Related credit supporters (defined as affiliates of the issuer) are required to certify the prospectus. Credit supporters that are not related credit supporters are treated under the proposed Rule in essentially the same fashion as other experts and must file a consent.

6. **Definitions of "approved rating" and "approved rating organization"**
The definition of "approved rating organization" has been expanded by adding Duff & Phelps Credit Rating Co., Fitch IBCA, Inc. and Thomson Bank Watch, Inc. The "approved rating" definition has been revised to refer to only the minimum rating categories required, as opposed to listing all of the acceptable categories.

7. **Promoters**
There is a new requirement in the proposed Short Form Prospectus form for disclosure concerning a person or company that is, or has been, within the two years immediately preceding the date of the preliminary short form prospectus, a promoter of the issuer or of a subsidiary of the issuer.

8. **Certificates for Non-corporate Issuers**
The certificate requirement has been expanded to permit, in cases where no CEO or CFO has been appointed, certificates of persons acting on behalf of an issuer in a capacity similar to a CEO and to a CFO.

Summary of Other Major Changes to NP 47
In addition to the changes discussed above, the following major changes, among others, have also been made to NP 47 and were first reflected in the 1998 proposed Instruments:

- The timing of the application of the public float test has changed such that the test must be satisfied on a date within 60 days before the filing of the preliminary short form prospectus.

- The expansion of the qualification criteria applicable to distributions of guaranteed non-convertible securities is expanded to include cash settled derivatives.

- The qualification criteria applicable to distributions of guaranteed non-convertible securities has changed such that the requirements that the guarantor have approved rating securities outstanding and that the securities being distributed have an approved rating have been omitted where the guarantor satisfies the $75,000,000 public float test.

- The qualification criteria applicable to distributions of guaranteed convertible securities has changed such that the requirements that the guarantor have approved rating securities outstanding and that the securities being distributed have an approved rating have been omitted on the basis that the guarantor is required to satisfy the $75,000,000 public float test.

- The concept of "alternative credit support" in the qualification criteria applicable to distributions of guaranteed securities has been added.

- Qualification criteria specifically applicable to distributions of asset-backed securities, as a result of which the shelf system will be available for such distributions, has been added.

For more information, please call **Joanne Peters**, Senior Legal Counsel, (416) 593-8134

22 OSCB July 23 (POP Supplement)

Rule 56-501 on Restricted Shares

The OSC has made and delivered Rule 56-501 to the Minister of Finance for approval. The Rule will provide holders of restricted shares and prospective purchasers of restricted shares with similar rights to those previously available to them under OSC Policy 1.3. If the Minister does not approve, reject or return the Rule to the Commission for further consideration, it will come into force on October 25, 1999. If the Minister approves the Rule, it will come into force 15 days after it is approved.

The Commission made an earlier version of the Rule in 1997 and submitted it to the Minister of Finance for approval. The Minister returned it to the OSC, however, for further consideration of its jurisdiction to make a rule that assigns voting rights to securities that are otherwise non-voting through the minority approval provisions contained in Part 3 of the Rule.

The proposed Rule now incorporates a number of changes. In particular, the Commission has amended its earlier definition of minority approval. The effect of this change is that holders of restricted shares that are not entitled to vote under corporate law will not, under the Rule, receive a vote on a proposed reorganization or stock distribution, and holders of restricted shares that are not given a class vote at corporate law will not receive a class vote under the Rule.

For more information, please call **Joanne Peters**, Senior Legal Counsel, (416) 593-8134.

22 OSCB August 13, page 5005

US Broker-Dealers Exemption from Registration

In October 1997, the CSA released for comment a proposed National Instrument on Conditional Exemption from Registration for United States Broker-Dealers and Agents (NI 35-301). The NI would provide US broker-dealers and their agents with a conditional exemption from the applicable registration and prospectus requirements under Canadian securities legislation. This would facilitate certain cross-border trading in foreign securities between US broker-dealers and US clients who are in a Canadian jurisdiction.

Based on comment letters, the CSA has decided that two reciprocity issues should be resolved before it implements the National Instrument. First, the SEC has published proposed rules that would provide registration relief to Canadian dealers and their salespersons similar to that provided to US broker-dealers and their agents under the NI. The CSA is awaiting the final SEC rules to ensure they provide sufficient reciprocal relief.

Second, the CSA believes that in order for sufficient reciprocity to be achieved, certain additional states in the US must adopt rules that provide relief substantively similar to that provided under the NI and the North American Securities Administrations Association resolution on this issue.

For more information, please call **Dirk de Lint**, Legal Counsel, (416) 593-8090.

22 OSCB July 16, page 4319

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

OSC Names Director of Capital Markets

William Gazzard has been named Director of the Capital Markets Branch at the OSC. Mr. Gazzard was formerly with Gordon Capital Corporation where he was General Counsel and a Director. Prior to joining Gordon Capital, Mr. Gazzard was Associate General Counsel and a Director at Nesbitt Thomson Inc. He has also served as Director of the Regulatory Policy Divisions within the Member Regulation Department at The Toronto Stock Exchange. Mr. Gazzard was called to the Ontario Bar in 1981.

Capital Markets is responsible for regulation of registrants, investment products, markets and clearing and settlement systems. The Capital Markets Branch encompasses the Market Regulation, Compliance, Registration and Investment Funds groups.

Recent Hearings

The staff of the OSC has recently been involved with three matters of interest to a broad audience of market participants.

Provigo Inc.– Early this year, Provigo Inc. sought Exemptive Relief from certain continuous disclosure requirements. As the principal jurisdiction under the Mutual Reliance Review System (MRRS), Quebec granted the relief. Ontario and British Columbia opted out of the MRRS for this application. OSC staff recommended a compromise: if Loblaw, which holds all the common shares of Provigo, guaranteed Provigo's debentures, the Commission would grant relief from the requirement that Provigo prepare and file its interim and annual financial statements, Form 28 and AIF on condition that summarized financial information about Provigo was provided in Loblaw interim financial statements in a note to its audited annual financial statements. Provigo did not agree with this condition and applied for complete relief from the disclosure requirements. The OSC held a hearing on the matter in June, denying Provigo's application and supporting the OSC staff's proposed compromise. Reasons were issued in the July 23rd OSC Bulletin.

JDS Uniphase Canada Ltd. – The OSC heard an appeal by JDS Uniphase Canada Ltd. on July 22 regarding the Director's decision on an application relating to a proposed public offering of exchangeable shares. The shares proposed to be issued would be exchangeable for common shares of JDS Uniphase Corporation, a United States corporation. JDS Uniphase Canada's preliminary prospectus incorporated by reference financial statements of JDS Uniphase Corporation, prepared in accordance with US generally accepted accounting principles. These statements were not reconciled to Canadian generally accepted accounting principles, as required by the Regulation. JDS Uniphase Canada had applied for relief from the reconciliation requirement and the Director had denied the relief. Following the hearing, the Commission confirmed the Director's decision refusing to grant relief in this matter. Reasons were issued in the August 13th OSC Bulletin.

Crystallex International Corporation – The OSC released a decision in the matter of Crystallex on April 20th. In this decision, the Commission considered two questions referred to it by the Director. The questions related to whether the issue of convertible securities by Crystallex under a preliminary short form prospectus to a single purchaser, Standard Bank London Limited (SBL), in satisfaction of Crystallex's loan repayment obligations to SBL (the Repayment Rights), is effectively a distribution of the underlying securities (the Common Shares) to public investors.

During the hearing, Commission staff expressed the view that the issue of the Repayment Rights by Crystallex to SBL, the issuance of Common Shares to SBL pursuant to the Repayment Rights, and the resale by SBL of Common Shares into the secondary market is one distribution such that the ultimate purchasers, being those that acquired Common Shares in the secondary market from SBL, should

receive a prospectus and the associated rights. The Commission concluded that the Director was correct in determining that it would be contrary to the public interest to permit Crystallex to use the technical device of qualifying the Repayment Rights by prospectus as a means of circumventing the general requirements for delivery of a prospectus to the true purchasers. Reasons were issued in the April 30th OSC Bulletin.

For more information, please contact **Iva Vranic**, Manager, Corporate Finance, (416) 593-8115, **Margo Paul**, Manager, Corporate Finance, (416) 593-8136, or **Heidi Franken**, Manager, Corporate Finance, (416) 593-8249.

Dialogue with the OSC

On October 26th, the OSC will hold its annual conference "Dialogue with the OSC".

The event will take place at the Westin Harbour Castle Hotel in Toronto. The focus for the day's program will be the OSC Statement of Priorities and will highlight initiatives that the Commission, along with other securities regulators, is working on to improve the efficiency of the Canadian regulatory regime. The cost to attend the event is $295.00.

For more information or to register for "Dialogue with the OSC", call (416) 593-7352.

For a copy of the agenda and to register online, visit the OSC Web site at *www.osc.gov.on.ca*.

Securities Investigators Training Course

Every two years, the Enforcement Branch hosts the Securities Investigators Training Course, a five-day event designed to familiarize securities professionals with various methods of investigating and prosecuting securities violations. This year the course was held from June 14th to June 18th.

Since 1975, the course has been held at the Kempenfelt Centre in Barrie. This year's agenda included Internet Fraud, Arbitration and Dispute Resolution, the Upstairs Market, Telemarketing Fraud, Market Manipulation, Money Laundering and Informant Development. Speakers were invited from the TSE, the SEC, the RCMP, law firms and consultants.

Recent IOSCO Publications

Staff of the OSC participate in working parties organized by the Technical Committee of the International Organization of Securities Commissions (IOSCO). The Technical Committee recently published reports prepared by two working parties that will be of interest to some of the OSC's constituents:

- *"Securities Lending Transactions: Market Development and Implications"*, a Joint Report by the Technical Committee and the Committee on Payment and Settlement Systems, July 1999.
- *"Regulatory Approaches to the Valuation and Pricing of Collective Investment Schemes"*, Report of the Technical Committee, May 1999.
- *"CIS Unit Pricing"*, Report of the Emerging Markets Committee, May 1999.
- *"A Comparison Between the Technical Committee Report and the Emerging Markets Committee Report on Valuation and Pricing of Collective Investment Schemes"*, Joint Report of the Technical Committee and the Emerging Markets Committee, May 1999.

The reports are available on the IOSCO Web site *www.iosco.org* or in printed format, for a nominal charge, from the IOSCO General Secretariat. The General Secretariat's address is noted on the Web site.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is comprised of the thirteen securities regulators of the provinces and territories of Canada.

Strategic Plan 1999-2001

Harmonizing securities regulation will be a key priority for the Canadian Securities Administrators in the years 1999-2001, according to their recently published Strategic Plan.

Harmonizing initiatives that the CSA will pursue include:

- building investor awareness, knowledge and competence through shared education initiatives;
- updating rules and policies for mutual funds;
- developing a "single-entry" prospectus and application filing and review system predicated on a functioning and effective mutual reliance system;
- jointly supervising national self-regulatory organizations/developing a "single entry" Canadian registration system based on a high-functioning mutual reliance system;
- moving toward a common regulatory approach to electronic and other alternative trading systems (ATSs); and
- formulating options and alternatives for a Canadian integrated disclosure system.

The CSA notes that it has already progressed considerably in developing many common rules, policies, approaches and systems. Examples include:

- regulation of alternative trading systems;
- creation of mutual reliance systems for review of applications for discretionary relief, prospectus review, and review of applications for registration of advisors and SRO dealers;
- establishment of a central electronic system for insider reporting;
- establishment of the System for Electronic Document Analysis and Retrieval (SEDAR);

- harmonization of escrow rules of Initial Public Offerings;
- harmonization of hold periods across CSA jurisdictions;
- development of self-regulatory organizations;
- development of a shared training program for use by staff members at all Securities Regulatory Authorities (SRA);
- alignment of most individual Commission planning cycles and processes with those of the CSA;
- shared attention to and regular interchange on the Year 2000 challenge faced by all SRAs; and
- open sharing of Commission plans and reports in direct support of improved resource sharing and streamlined operations.

Key Challenges

In their plan, the CSA note a number of important challenges that will impact all of the securities administrators in the coming years. Among them are:

- global integration of markets and the rapid pace of technological change;
- the increasing dominance of the secondary market and rapid growth of the market for investment funds;
- addressing gaps in financial services regulation;
- building a "Canadian Securities Regulatory System", within available resources, which reflects local concerns, priorities and legislation;
- public confidence in the integrity of Canada's markets; and
- development of varying business structures for the securities regulatory authorities.

Summing up the Strategic Plan for 1999-2001, the CSA

"Provide effective deterrence of abusive, unfair and fraudulent practices through aggressive and coordinated enforcement."

identify their "core" strategies as the following:

1. Continue to build and administer the Canadian Securities Regulatory System.
2. Build and sustain a high level of investor confidence and competence through a strong public voice and education initiatives.
3. Play an active and leading role in helping markets respond adequately to the Year 2000 issue.
4. Provide an effective regime for existing, alternative and emerging trading systems.
5. Provide an effective regulatory framework for supervising the distribution of investment products and advice.
6. Provide effective oversight of self-regulatory organizations.
7. Provide effective deterrence of abusive, unfair and fraudulent practices through aggressive and coordinated enforcement, harmonized legislative empowerment (where possible) and clear, compelling and effective administrative order, civil remedies and quasi-criminal penalties.

For more information, please call **Kathleen Finlay**, Manager, Project Office (416) 593-8125.

Distribution Structures Paper Published

The CSA has published a Position Paper on distribution structures that will have a significant impact on the manner in which certain registrants organize and conduct their business operations.

The paper sets out both acceptable and not-acceptable distribution structures — that is, how securities firms organize their businesses. Among the structures deemed unacceptable are the payment of commissions to an unregistered corporation, and the use of independent contractors.

"Non-traditional structures do not always satisfy the regulatory concerns regarding effective supervision of salespersons, legal responsibility to the client, and access to books and records."

Under the traditional structure, a dealer markets and delivers its services through its partners, officers, and/or employees. The dealer's liability for the actions of its salespersons and its duty to supervise the actions of those salespersons is clear. There has been, however, pressure from the securities industry to allow the use of non-traditional structures. In some cases, firms have already implemented these structures. These non-traditional structures do not always satisfy the regulatory concerns regarding effective supervision of salespersons, legal responsibility to the client, and access to books and records.

The CSA Committee reviewed six specific subjects: dual employment, securities sold under exemptions, trade names, referral arrangements and commission splitting, financial planning activities by registrants, and the legal relationships that exist between dealers and their salespersons.

Dual Employment: Dual employment will be allowed, provided that the salespersons' other employment does not interfere with their duties and responsibilities as salespersons and provided that the dealer is responsible and liable for all of the financial service activities of the salespersons that are not subject to another regulatory regime.

Securities Sold Under Exemptions: Restricted dealers and salespersons will be permitted to sell only those securities for which they are expressly registered, as well as deposit instruments and government debt instruments.

Trade Names: Trade names and trademarks will be permitted to accompany, but not replace, the full legal name of the dealer on materials that are used to communicate with the public, provided that the following condition, and others specified in the Position Paper, are met: all trade names and trademarks through which a salesperson conducts registerable activities and financial service activities that are

not subject to another regulatory regime must be registered to the dealer.

Referral Arrangements and Commission Splitting: Referral arrangements will be permitted only between dealers or between dealers and entities that are licensed or registered under some other regulatory system that is acceptable for the purpose of referral arrangements ("acceptable entity"), and then only if certain conditions specified in the Position Paper are satisfied. These conditions include the requirement that there be a written agreement governing the payment of referral fees between the dealers, or the dealer and the acceptable entity. The agreement cannot be between the salespersons themselves.

Financial Planning Activities by Registrants: Salespersons who provide financial planning services must do so through the dealer that sponsors their securities registrations. They must also comply with certain other requirements that are detailed in the Position Paper, including the requirement that salespersons must satisfy minimum proficiency standards.

Acceptable Business Structures

Dealer as employer and salespersons as employees, or dealer as principal and salespersons as agents: A structure wherein the dealer is the employer and the sales force is composed of employees is acceptable. Where the dealer is the principal and the salespersons are agents, the structure will also be acceptable, but only if the conditions set out in the Position Paper's discussion of salespersons as agents are satisfied.

Service provider business structure: Unregistered corporations may provide certain services to a dealer and its salespersons, provided that the conditions discussed in the Position Paper are satisfied. Those conditions include the requirement that the dealer's ultimate responsibility and liability to clients must not be affected by these arrangements.

Introducing and carrying dealer model: Dealers may only enter into arrangements involving multiple corporations when all of those corporations are registered in an appropriate category of dealer or the arrangement is in accordance with the service provider model.

Independent contractor: Salespersons will not be permitted to carry out their financial service activities on behalf of a dealer where they are acting as independent contractors.

Incorporation without registration: Subject to the discussion above concerning *Introducing and Carrying Dealer Structures and Service Provider Structures*, salespersons will not be allowed to incorporate in order to conduct registerable activities and financial service activities that are not subject to another regulatory regime.

For more information, please call **Jennifer Elliott**, Legal Counsel, (416) 593-8109, or **Irene M. Tsatsos**, Senior Accountant, (416) 593-8223.

Proposal to Introduce Statutory Civil Liability for Continuous Disclosure in Canada

Early in 1999, staff members for the securities commissions in Ontario, British Columbia, Alberta, Saskatchewan and Quebec (the CSA Civil Remedies Committee) presented a report to the CSA Chairs which summarized the comments received in response to draft legislation published for comment on May 29, 1998 that would, if adopted, introduce a limited statutory civil liability regime in respect of secondary market disclosure. The staff report included a proposed approach for moving this legislative initiative forward which the CSA Chairs endorsed. The CSA Civil Remedies Committee is proceeding to reconsider the draft legislation, taking into account both formal and informal comments received since its publication.

The Committee has also been reviewing and comparing existing Canadian provincial class action regimes and has met with outside counsel to discuss various aspects of civil procedure particularly in the context of class action litigation in Canada and the US. The Committee is also reviewing recent legislative changes in the United States which were intended to address perceived abuses in securities class action litigation against publicly held companies as well as the development of the case law under Rule 10b-5 of the Securities Exchange Act of 1934. If material changes are made to the legislative proposal, the CSA may publish it for comment again.

For more information, please call **Susan Wolburgh Jenah**, General Counsel (416) 593-8245, or **Rossana Di Lieto**, Legal Counsel (416) 593-8106.

SEDAR Updates

A new version of the SEDAR Filer Software (Release 6.0) was released in September. The new requirement that electronic filers file all documents exclusively in PDF format will become effective with the implementation of Release 6.0.

The CSA recently implemented a number of other amendments to the SEDAR Instrument. The amendments eliminate certain definitions and other items contained in the Definitions Instrument (NI 14-101) because they are no longer needed in the SEDAR Instrument. Another change incorporates by reference the most recent version of the Filer Manual in the SEDAR Instrument to avoid the need to amend the Instrument each time a new version of the Manual is released.

For more information, please call **Karen Eby**, SEDAR Project, (416) 593-8242.

Trust Accounts for Mutual Fund Securities

CSA staff has published a notice designed to assist dealers in complying with section 12 of National Policy 39, which deals with commingling of money by mutual fund dealers and securities dealers. The notice grew out of staff observations when conducting compliance field reviews of inappropriate practices related to the use of trust accounts.

The staff notice discusses matters including designating a trust account; commingling of funds; allowable expenses against trust account interest; advancing funds to clients; reconciliations and internal controls; and requirements in British Columbia. The notice was published in the May 14th issue of the OSC Bulletin.

For more information, please call **Irene M. Tsatsos**, Senior Accountant, (416) 593-8223.

22 OSCB May 14, page 2939

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

The Crabbe Huson Group, Inc.

On August 10, 1999, the Ontario Securities Commission (the "Commission") announced that it had approved a settlement reached by staff of the Commission in a proceeding brought against The Crabbe Huson Group, Inc. ("Crabbe Huson").

In April of 1996, Crabbe Huson, an investment management firm based in Portland, Oregon, began purchasing common shares of Lytton Minerals Limited ("Lytton"), a Canadian corporation whose common shares traded on The Toronto Stock Exchange.

By May 4, 1998, it had acquired an aggregate of 29,872,000 common shares of Lytton, representing approximately 25.87% of the outstanding common shares of Lytton. Crabbe Huson purchased these shares on behalf of its managed accounts.

In the Settlement Agreement, Crabbe Huson admitted that it had contravened the take-over bid requirements, early warning reporting requirements and insider trading reporting requirements in Parts XX and XXI of the *Ontario Securities Act* (the "Act") in connection with its acquisition of the common shares of Lytton, and that such conduct was contrary to the public interest.

Under the terms of the settlement, Crabbe Huson paid a total of US$120,000 to the Commission, in trust, to be allocated by the Commission to third parties for purposes that will benefit investors in Ontario. The settlement payment represented disgorgement of the profit earned by Crabbe Huson from management fees charged to its managed accounts, attributable to the holdings of Lytton common shares by such accounts in excess of 10% of the Lytton common shares when outstanding. In addition, Crabbe Huson made a payment in the amount of Cdn.$40,000 representing a contribution towards the cost of staff's investigation of this matter.

Marchment & MacKay Limited et al

On July 16, 1999, the Ontario Securities Commission (the "Commission") released its decision in the matter of Marchment & MacKay Limited et al ("Marchment"). The hearing in this matter commenced on June 22, 1998 and concluded on June 24, 1999. During the course of 38 hearing days, staff of the Commission (staff) presented evidence to support allegations that the above-named Respondents failed to deal fairly, honestly and in good faith with their clients and that they engaged in high-pressure sales techniques to sell speculative penny stocks without regard to the suitability of the investment needs of the client.

In its decision, the Commission stated: "We have concluded that Marchment has, since January 1993, engaged in extensive campaigns to sell speculative penny stocks from its inventory by telephone through numerous salespeople without regard to the suitability of the trades to the needs of its clients. These campaigns have been conducted in a manner intended to induce the customer to make a hasty decision to buy the security being offered without disclosure of the risks inherent in the investment or disclosure that an integral part of Marchment's selling campaign is the establishment by Marchment from time to time of the trading price of the securities." The Commission further found that Charles Lorne Ornstein and Amit James Sofer conceived and implemented this aspect of Marchment's business and that Jerry Murray Saltsman, Gregory Charles Osborne and Fraser John Edward Plant were each knowing and willing participants in these campaigns. As such, the Commission held that the individual Respondents had failed to deal fairly, honestly and in good faith with Marchment's clients.

Accordingly, the Commission ordered that:

(a) the registration of Marchment & MacKay Limited be terminated permanently;
(b) registration of the company's president and principal shareholder, Charles Lorne Ornstein, be terminated for life;
(c) the registration of the company's vice-president and compliance officer, Amit James Sofer, be suspended for 10 years;
(d) the registration of Jerry Murray Saltsman, salesperson, be terminated for life;
(e) the registration of Gregory Charles Osborne, salesperson, be suspended for 7 years; and
(f) the registration of Fraser John Edward Plant, salesperson, be suspended for 5 years.

Martin Shefsky

The Ontario Securities Commission (the "Commission") approved a Settlement Agreement entered into between staff of the Commission and Martin Shefsky in which Mr. Shefsky undertook not to apply to the Commission for registration for a period of ninety days, and agreed that if he applied after ninety days and such application was approved, his registration would be subject to terms and conditions ensuring that his activities would be closely supervised. The Commission also issued a reprimand to Mr. Shefsky.

The agreed statement of facts in the Settlement Agreement stated that Mr. Shefsky controlled a private corporation known as Toreal Holdings Limited ("Toreal"). Toreal held a controlling interest in Evans Health Group ("Evans"), a publicly traded company. Mr. Shefsky admitted that Toreal engaged in prohibited transactions in shares of Evans. In addition, Toreal failed, on a number of occasions, to comply with its obligation to file insider and other reports required by Ontario securities law. Staff and Mr. Shefsky agreed that these breaches were inadvertent and were not for any improper purpose.

Regal Goldfields Limited

On June 11, 1999, the Ontario Securities Commission (the "Commission") publicly announced its decision to close its investigation into trading in shares of Regal Goldfields Limited ("Regal"). The Commission does not generally make such announcements, however; as it had earlier confirmed that it was reviewing a complaint about the matter, the Commission felt it was appropriate that the decision to close the subsequent investigation be made public.

Staff of the Commission ("staff") was investigating allegations of insider/tippee trading prior to the release of the Nova Scotia government's decision to remove protected wilderness status from certain lands in Nova Scotia and permit mineral exploration and possible mine development on those lands. Staff found no basis for the allegation that there was improper trading in shares of Regal prior to publication of the government's decision.

(The OSC's Current Agenda)

Maintaining and enhancing the credibility of financial information required from reporting issuers is an item that is high on the Commission's current agenda.

In part, public concern about the credibility of published information has been accentuated by a few high profile situations in which fraud or misconduct has been determined/alleged. While these situations are clearly of concern to the Commission, our primary focus is on whether generally accepted accounting principles (GAAP) and generally accepted auditing standards (GAAS) are being applied appropriately. Our concerns in this regard are influenced by several environmental factors that may affect behaviour or shape perceptions. First, in an environment in which share prices can decline dramatically on the basis of earnings in a single quarter, the escalating pressure on management to meet market expectations creates considerable temptation to distort earnings. Second, we have a growing concern about the real and perceived threat to the independence of the auditor where significant non-audit services are provided to audit clients. This concern becomes more pronounced as public accounting firms expand into providing a wider range of professional services and the audit practice contributes a lesser proportion of income.

More so than in the United States, Canadian accounting standards have historically tended to set out basic principles rather than detailed rules, implicitly relying on the professional judgment of management and auditors to achieve the optimum balance between objectivity and adaptability. The experience of staff suggests that this balance is slipping. In our review of financial statements, we encounter regularly situations in which reporting issuers, apparently supported by their auditors, stretch the interpretation of accounting standards beyond all reasonable limits. Conclusions are based on narrow interpretations of standards without regard to their broader context. Standards are treated more like narrowly written rules rather than broad principles requiring the exercise of sound professional judgment in their application. This "loophole mentality" fails to achieve what The Macdonald Commission, in its report on the public's expectations of audits, characterized as "a fair and reasonable interpretation of the spirit of the standard". We believe this goal is one for which preparers and auditors alike should strive.

"The Commission, however, will not remain as an observer from the sidelines if the quality of financial reporting appears to be eroding."

Commission members and staff, investors and analysts alike are expressing a growing frustration that a number of problems appear to be not only persisting but flourishing. In some cases, the issue is overstatement of current income, perhaps by use of aggressive and inappropriate revenue recognition practices, in others it may be understatement of current income through excessive "one time" charges that have the effect of making future earnings look better. A significant part of the responsibility for addressing these issues lies with the accounting profession. The Commission relies

first on the Canadian Institute of Chartered Accountants to establish appropriate accounting and auditing standards and second on the public accounting firms who audit the financial statements of reporting issuers to enforce rigorously those standards. The Commission, however, will not remain as an observer from the sidelines if the quality of financial reporting appears to be eroding.

The recent founding of our Continuous Disclosure Team represents a key step in increasing our presence in the area of financial reporting. Over time, this team will lead a rebalancing of staff resources to ensure adequate review of financial information in the context of continuous disclosure documents as opposed to offering documents. This group ultimately will aim to review the statements of the majority of public issuers on a periodic basis, as well as targeting issues raised by current transactions, media reports, or other sources. The continuous disclosure group will also work on longer-term strategic initiatives - such as a review of disclosure practices of issuers - to ensure that information is disclosed to the marketplace as a whole rather than selectively, or a review of the overall quality of Management's Discussion and Analysis (MD&A).

"Our primary goal is to improve the quality of financial reporting, but we are also fully prepared for a more active role to lead to a greater number of accounting-related enforcement actions. Of course, violations of specific requirements in individual standards provide obvious bases for such actions."

For issuers this will mean that they should fully expect to find themselves challenged more frequently on accounting matters, whether or not they have recently filed a document offering securities. Our primary goal is to improve the quality of financial reporting but we are also fully prepared for a more active role to lead to a greater number of accounting-related enforcement actions. Of course, violations of specific requirements in individual standards provide obvious bases for such actions. Beyond this, however, staff increasingly will be aggressive in pursuing accounting treatments that, while not addressed explicitly in existing standards, are not clearly supportable by reference to the body of accounting literature as a whole, including fundamental accounting concepts. Staff will not hesitate to question some of the diverse treatments followed in practice that we believe are not fully justifiable in relation to the underlying accounting concepts. Our efforts will be concentrated on addressing key areas of accounting inconsistency. When necessary, staff will work with the Commission to consider the appropriateness of using its rulemaking powers to address problem areas within GAAP.

Staff will also consider other elements of the financial reporting environment, such as the role of the Audit Committee in contributing to effective oversight by the Board of Directors. The Audit Committee has a vital role in promoting the independence of the auditor and ensuring high quality financial reporting. As the financial reporting process becomes ever more complex, an effective Audit Committee needs to understand fully the implications of key decisions made by management in preparing financial statements.

We will continue to emphasize to the accounting profession the importance of ensuring an effective compliance and disciplinary process. In appropriate cases, the Commission will be prepared to convene a hearing to examine the conduct of an auditor. This could lead to a reprimand of the individual or firm, a factor that would be taken into account by the Director in deciding on the future acceptability of an individual or firm as an auditor of financial statements filed with the Commission.

The accounting profession in Canada is a self-regulating profession, and the Commission is in many ways predisposed to respect its autonomy. The Commission's primary responsibility, however, is to safeguard the strength, vigour and integrity of our capital markets. In discharging this mandate, we intend to work closely with appropriate professional and standards-setting bodies. Issuers and investors can expect, however, that the Commission and its staff increasingly will be prominent in moving forward our agenda with respect to maintaining and enhancing the credibility of financial reporting in the public markets.

Perspectives is published quarterly by the Corporate Relations Branch of the Ontario Securities Commission. *Perspectives* welcomes letters to the editor.

If you wish to be on the mailing list for *Perspectives*, please contact us at:

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Corporate Relations Branch
20 Queen St. West
Toronto, M5H 3S8
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The OSC web site, www.osc.gov.on.ca includes:
Information on the OSC; Investor Information, Rules and Regulations, Enforcement Information and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 2, Issue 4

FALL 1999

inside...

FEATURE

Government Proposes Amendments to Securities Act, the Commodity Futures Act and the Toronto Stock Exchange Act

On November 16, 1999, proposed amendments to the *Securities Act*, the *Commodity Futures Act* and the *Toronto Stock Exchange Act* were introduced by the Minister of Finance as a part of the government's Fall 1999 Budget Bill. The proposed amendments are included in Bill 14, the *More Tax Cuts for Jobs, Growth and Prosperity Act, 1999* (the *"Prosperity Act"*). Bill 14 has received third reading and is awaiting royal assent.

The vast majority of the proposed amendments to the *Securities Act* and the *Commodity Futures Act* were previously submitted for inclusion in the government's Red Tape Bill. In the May 1999 Budget, the Government recognized the importance of strengthening and upgrading securities regulation and enhancing the capital markets. Inclusion of the *Securities Act* and the *Commodity Futures Act* amendments in the *Prosperity Act* underscores the Government's support for

(continued on page 16)

INDEX

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Proposed Financial Planning Proficiency Standards

The Canadian Securities Administrators has published for comment proposed Multilateral Instrument 33-107(MI) which would create uniform financial planning proficiency standards applicable for individuals who are registered to trade or advise in securities and who use business titles that convey to consumers the impression that they are providing financial planning or similar advice, or to offer financial planning or similar services.

Although the MI is an initiative of the CSA, the proficiency regime has been developed in conjunction with a number of provincial insurance regulators and insurance councils. Some insurance regulators are seeking comment from their stakeholders on the proposed regime through the CSA comment process on the basis of the MI and accompanying Notice. Others are monitoring the results of the consultation. The Notice is intended to solicit comments from stakeholders in both the securities and insurance sectors. Any comments received will be used by participating insurance and securities regulators to create a harmonized proficiency standard applicable to both securities registrants and insurance licensees. The Commission des valeurs mobilières du Québec did not participate, as a comprehensive regulatory regime governing financial planners came into effect in Quebec on October 1, 1999.

Application of MI: Restricted Titles for Individuals and Firms

The proposed MI would operate as a new condition of registration for registered individuals and firms. The proposed MI would require registered individuals and firms to meet the new proficiency standard in order to use a title or service description that suggests financial planning expertise. The restricted titles are set out in the proposed MI. The restricted titles are defined on the basis of two word pools, one of which signifies the activity, and the other the subject of the activity. There is a carve out for certain word combinations when used as a business title by a limited category of individual registrants.

Similar title restrictions apply to firms holding themselves or their employees out using business titles or service descriptions that connote financial planning or similar advice. Firms must provide this advice through an individual who meets the proficiency standard.

Subject Pool	Activity Pool	Carve Out
any term	**planner**	**none**
financial, retirement, wealth, money, security, asset	adviser, advisor, consultant, specialist, expert, counsellor, manager	[financial, security, money wealth, asset] + [manager] if registered as portfolio manager and activities confined to discretionary portfolio management

Proficiency Standard

The proficiency standard, which must be met before a registrant can hold himself or herself out under a restricted title, consists of:

1. Passing the Financial Planning Proficiency Examination (FPPE), currently under development by the CSA in consultation with industry and educational experts;

2. Two years industry experience, identified by registration, in the previous five calendar years; and

3. A commitment to an acceptable continuing education program.

The FPPE will be designed in accordance with accepted procedures in the measurement profession by a group of experts representing the principal course providers and a specialist in measurement and evaluation. The FPPE will test proficiency in various subject areas as are necessary to provide competent comprehensive integrated financial advice of the type a consumer would associate with the term "financial planning".

Transitional Grandfathering Relief

Transitional grandfathering relief from the examination requirement is included for people who have completed a recognized course of study primarily directed at financial planning expertise. This includes individuals enrolled in such a course on the effective date of the MI who complete the course within two years. Until the grandfathering criterion is met an individual cannot use a restricted title. Designations are only specified where they indicate an additional level of testing beyond the course of study necessary to obtain them.

The categories of grandfathered individuals are:

a. Individuals who, as of •, 2001, have passed the Professional Proficiency Examination administered by the Financial Planners Standards Council.

b. Individuals who, as of •, 2001, hold the designation of Personal Financial Planner administered by The Institute of Canadian Bankers.

c. Individuals who, as of •, 2001, have passed the Professional Financial Planning Course and examinations offered by the Canadian Securities Institute.

d. Individuals who, as of •, 2001, have completed a comprehensive financial planning program offered by the

Canadian Institute of Financial Planning and passed the associated examinations.

e. Individuals who, as of •, 2001, have passed the Registered Financial Planner examination and hold the designation of Registered Financial Planner administered by the Canadian Association of Financial Planners.

f. Individuals who, as of •, 2001, have passed the courses and examinations in the Chartered Financial Consultant program administered by the Canadian Association of Insurance and Financial Advisors.

g. Individuals who, as of •, 2001, hold the designation of Specialist in Financial Counseling administered by The Institute of Canadian Bankers and, within two years after •, 2001, have passed its Insurance and Estate Planning Course and Taxation and Investment Course.

h. Individuals who, as of •, 2001, were enrolled in a course of study of the Specialist in Financial Counseling Program of The Institute of Canadian Bankers and, within two years after •, 2001, have:
   1) Obtained its designation of Specialist in Financial Consulting; and
   2) Passed its Insurance and Estate Planning Course and Taxation and Investment Course.

i. Individuals who, as of •, 2001, were enrolled in a course of study approved by the Financial Planners Standards Council and, within two years after •, 2001, have passed the Professional Proficiency Examination administered by it.

j. Individuals who, as of •, 2001, were enrolled in the comprehensive financial planning program offered by the Canadian Institute of Financial Planning and, within two years after •, 2001, have passed the associated examinations.

k. Individuals who, as of •, 2001, were enrolled in a course of study of the Personal Financial Planning Program of The Institute of Canadian Bankers and, within two years after •, 2001, have obtained its designation of Personal Financial Planner.

l. Individuals who, as of •, 2001, were enrolled in the Professional Financial Planning Course offered by the Canadian Securities Institute and, within two years after •, 2001, have passed the associated examinations.

m. Individuals who, as of •, 2001, were enrolled in the Chartered Financial Consultant program administered by the Canadian Association of Insurance and Financial Advisors and, within two years after •, 2001, have passed the associated examinations.

n. Individuals who, as of •, 2001, have received a diploma from the Institut québécois de planification financière and were authorized by it to use the title of financial planner under the Act respecting the distribution of financial products and services (Quebec).

Effective Date of Multilateral Instrument
The effective date of the Multilateral Instrument will be the date on which the results of the first FPPE can be made available. The present projected date is early in 2001.

Notice
Individuals intending to satisfy the requirements of the MI must file a notice to that effect. Individuals intending to rely on the grandfathering relief must file the notice within three years of the effective date of the MI. Individuals who are enrolled in one of the courses of study on the effective date of the MI must pass the course within two years of the effective date of the MI if they intend to rely on grandfathering relief when they file their notice.

Comment Period
The CSA Notice accompanying the proposed Multilateral Instrument invites interested parties to make written submissions by March 6, 2000. Parties interested in making comments should consult the Notice and the Multilateral Instrument at OSC website *www.osc.gov.on.ca*

For more information, please call **Julia Dublin**, Chair, CSA Financial Planning Committee, (416) 593-8103.
22 OSCB December 3, 1999, page 7669

Additional Proficiency Updates

The OSC has published for comment changes to a proposed Rule on Proficiency Requirements for Registrants (Rule 31-502). In general, the Rule updates and consolidates the proficiency requirements for dealers and advisers by codifying the OSC Staff's practice of accepting certain alternative courses.

The recent Notice outlines changes developed after the Minister of Finance returned the Rule to the Commission for further consideration in December 1998. Among the key proposed changes:

- Limiting the number of restricted representatives whose full service dealer registration may be restricted to the sale of mutual funds and requiring such restricted representatives to upgrade their proficiency to the full service dealer level within 9 months of registration.

- Requiring new branch managers who supervise options trading to complete an options supervisors course. Current branch managers who supervise option, traders are not required to complete the course.

- Requiring an applicant to have completed a required course not more than three years, rather than five years, before the date of application.

For more information, please call **Dirk de Lint**, Legal Counsel, Market Regulations (416) 593-8090.
22 OSCB September 17, 1999, page 5739

Insider Reporting Requirement Exemptions

In order to reduce the burden of unnecessary regulatory obligations for company executives, the CSA have proposed National Instrument 55-101 (the "Instrument") that would provide certain exemptions from insider reporting requirements.

The Instrument would provide an exemption from the obligation to file insider reports for certain directors and senior officers of subsidiaries and affiliates of insiders who neither hold the securities of a reporting issuer in significant amounts nor are in a position to acquire knowledge of undisclosed material information. The Instrument would also permit directors and senior officers of reporting issuers to report acquisitions of securities under automatic securities purchase plans on an annual basis in most circumstances.

"The Instrument would help to relieve reporting burdens that stem from certain aspects of Canadian securities legislation."

The Instrument would help to relieve reporting burdens that stem from certain aspects of Canadian securities legislation. For example, securities legislation obliges insiders to disclose ownership of and trading in securities of reporting issuers. Every director or senior officer of a company that is itself an insider of a reporting issuer is also an insider of the reporting issuer. Securities legislation (except in Quebec) stipulates that a company is deemed to beneficially own securities that are beneficially owned by its affiliates. As a result, directors and senior officers of affiliates of an insider of a reporting issuer must meet insider reporting requirements. These directors and officers may have no relationship with the reporting issuer and no access to undisclosed material information about the issuer. The Instrument would generally relieve such persons from insider reporting requirements. Likewise, the Instrument would generally relieve directors and officers of minor subsidiaries of a reporting issuer from insider reporting requirements.

In addition, Canadian securities legislation requires insiders to file a report for each purchase made under automatic securities purchase plans. These purchases typically are made in amounts, and at prices and times set by established criteria, where the insider's only decision is whether to continue or cease participating in the plan. Again, the Instrument would provide relief from insider reporting requirements in such circumstances, and would substitute an annual reporting requirement instead.

For more information, please call **Victoria Stewart**, Legal Counsel, Corporate Finance, (416) 593-8266.

22 OSCB August 20, 1999, page 5161.

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

Two New Commissioners Appointed

Theresa ("Terry") **McLeod** has joined the OSC as a Commissioner effective October 27, 1999. She is a Chartered Financial Analyst and Founder and President of McLeod Capital Corporation, a financial and regulatory consulting firm established in January 1997. The firm's clients are primarily in the natural gas and electric utilities industry in Western Canada. Ms. McLeod has worked in the investment banking industry since 1971. Her most recent affiliations were with Merrill Lynch and ScotiaMcLeod.

Robert W. Davis, FCA, has been named a Commissioner, effective November 29, 1999. Mr. Davis is a retired Partner with the firm of KPMG and is a Member and Fellow of the Ontario and Canadian Institute of Chartered Accountants. He is presently a Member of the Board of Directors of the Dai-Ichi Kangyo Bank (Canada) and President of Camiton Inc., a private holding firm through which he provides a range of financial, management consulting and business advisory services.

New OSC Secretary

John Stevenson has recently been appointed as the new Secretary to the OSC. Most recently, he served as Corporate Secretary and Counsel for a Canadian international finance company. Prior to this he practiced corporate securities and administrative law with a leading Toronto law firm. Mr. Stevenson is a graduate of Queen's University, Faculty of Law, and for over 13 years was a professor and consultant in business and management studies.

OSC Releases 1999 Annual Report

Delivered to a broad section of the Ontario investment community, the OSC's 1999 Annual Report reflects the new energy at the Commission as it embarked on its first full year as a self-funded Crown Corporation. The report contains highlights of the year as well as a summary of the significant enforcement actions from the last 12 months.

The 1999 Annual Report is available on the OSC web site *www.osc.gov.on.ca.*

Dialogue with the OSC

On October 26, the OSC hosted "Dialogue with the OSC", an all-day industry conference focusing on the Commission's Statement of Priorities. Topics included Enforcement Actions,

Mergers and Acquisitions, Electronic Trading and Changing Markets, Registrant Regulations and a Corporate Finance Update. Over 250 delegates from the professional as well as investor communities participated.

The day started with a Panel of Chairs from Ontario, Alberta and British Columbia. The Chairs discussed the Multi Jurisdictional Disclosure System and the Mutual Reliance Review System, among other issues. The keynote speaker was Douglas Hyndman, Chair of the British Columbia Securities Commission.

OSC Conducts Corporate Disclosure Survey

The OSC has recently created a Continuous Disclosure Team (CDT) within its Corporate Finance Branch to review the continuous disclosure filings made by public companies and address policy issues in the area of continuous disclosure. The quality of financial reporting and other continuous disclosure made by public companies has become a major focus at the OSC.

One of the CDT's first policy initiatives is to address the issue of selective disclosure of material information. The issue of selective disclosure arises when a company discloses material information to select groups or individuals that has not been disclosed to the public. The disclosure of non-public material information to these recipients gives them a potential advantage over other investors who do not have access to this information. Unequal access to information undermines the 'fairness' of the capital markets and results in an uneven playing field.

As a first step in addressing the issue of selective disclosure, staff has conducted a survey of disclosure practices of public companies. Four hundred public companies were randomly selected across all industries to participate in a Corporate Disclosure Survey. The survey was sent at the beginning of October and responses were due by the beginning of November. Companies that have not received a copy of the survey and wish to provide input can complete the survey on the OSC website at *www.osc.gov.on.ca*.

The survey questions explored companies disclosure practices and policies concerning:

- meetings and discussions with analysts and other groups or individuals;
- restrictions on who is invited to participate in quarterly conference calls;
- responses to requests for information that is not available on the public record;
- commenting on draft analyst reports;
- duration of time for a "black-out" period prior to scheduled earnings releases during which no sensitive information is provided by the company; and
- procedures companies follow if material non-public information is inadvertently disclosed to select groups or individuals.

The survey was not intended to identify companies that are selectively disclosing information. Rather, the objective of the survey was to seek input from public companies on current practices and how they could be improved.

Staff expects the results of the survey will enable the OSC to report best practices related to disclosure in the Canadian market and provide guidance to issuers and their advisors.

For more information please call **Heidi Franken**, Manager, Continuous Disclosure (416) 593-8249, **Joanne Peters**, Senior Legal Counsel (416) 593-8134 or **Lisa Enright**, Senior Accountant (416) 593-3686.

OSC Warns Financial Institutions Re: Processing of Trades for Mutual Fund Dealers

The OSC has issued a staff notice warning financial institutions against processing equity and fixed income trades for clients of mutual fund dealers.

In some cases, equity and fixed income trades for clients of mutual fund dealers are being processed by financial institutions using certain exemptions in the Regulations that permit a financial institution to accept and process unsolicited equity trades without registration, provided the trades are executed through a registered dealer. Some financial institutions have pre-printed trade tickets, which are distributed to mutual fund dealers. In certain cases, the representative of the mutual fund dealer signs the trade ticket using a power of attorney signed by the client. Some dealers have even advertised the ability to process trades through financial institutions.

"Staff is concerned that financial institutions are using certain exemptions to allow mutual fund dealers to carry on a business in processing client equity and fixed income trades."

Many of these trades take place in the self-directed RRSP accounts offered by the mutual fund dealer. Dealers have also acted as administrators for these RRSP accounts on behalf of the financial institutions. Should these accounts hold equity and fixed income securities, OSC staff is of the view that the mutual fund dealer is carrying on activities not in compliance with their registration.

Staff is concerned that financial institutions are using certain exemptions under the Regulation to allow the mutual fund dealer to carry on a business in processing client trades that a mutual fund dealer is not entitled to make under their registration. In addition, staff is concerned that these trades are not

truly unsolicited since there is a high volume of trades, the practice has been advertised, and pre-printed, mass-produced trade tickets are being provided to clients. This would suggest the financial institution is also carrying on improper trading activities.

In staff's view, compliance with securities legislation dictates that financial institutions and mutual fund dealers which have employed this structure advise clients that they are not permitted by securities law to handle trades in equity and fixed income securities.

Staff considers the following as acceptable actions to ensure compliance for those accounts containing equity and fixed income securities currently being held on the books and records of the mutual fund dealer.

The dealer could give clients the options of:

1) Transferring their accounts to an appropriately registered dealer;
2) Transferring the equity and fixed income portion of the account to an appropriately registered dealer; or
3) Opening a delivery-against-payment account at a securities or investment dealer for each client to facilitate equity and fixed income transactions and transferring all positions in the account to the trust company that will act as custodian of all assets in the account. Under option 3, clients would have to direct all equity and fixed income trades directly to the securities or investment dealer.

OSC staff intends to devote field examination resources to further address these issues.

For more information, please call **Elle Koor**, Senior Accountant, Compliance, (416) 593-8077, or **Jennifer Elliott**, Legal Counsel, Market Regulation, (416) 593-8109.

22 OSCB November 12, 1999 page 7091

OSC Suggests Companies, Registrants Take Steps as SEC Reviews MJDS Comments

The OSC staff is advising Canadian issuers to take a number of steps in light of the US Securities and Exchange Commission's (SEC's) request for comment on whether to continue the Multi-Jurisdictional Disclosure System (MJDS) for Canadian issuers.

"OSC staff suggests that Canadian companies consider reviewing the Aircraft Carrier Release in case the MJDS may not be available to them in the future."

The SEC requested comments in connection with its proposal for reforming its registration system (SEC Release Nos. 33-7606A, 34-40432A, IC-23519A (November 13, 1998), frequently referred to as the "Aircraft Carrier Release"). In response, the OSC staff suggests that Canadian companies consider reviewing the Aircraft Carrier Release in case the MJDS may not be available to them in the future.

As well, Canadian market participants may wish to evaluate the potential implications of two other SEC proposals: SEC Release Nos. 33-7611, 34-40678 Cross-Border Tender Offerings, Business Combinations, and Rights Offerings (November 13, 1998) and SEC Release Nos. 33-7637, 34-4104 International Disclosure Standards (February 2, 1999). These are available on the SEC website at www.sec.gov.

The OSC and other CSA members are continuing discussions with the SEC staff regarding the status of the MJDS. SEC staff has advised the OSC that any proposals relating to the MJDS would be published with a request for public comment before any final actions are taken.

For more information, please call **Kathryn Soden**, Director, Corporate Finance, (416) 593-8149 or **Iva Vranic**, Manager, Corporate Finance, (416) 593-8115.

22 OSCB September 17, 1999 page 5701

IOSCO Report on Hedge Funds

A Task Force of the International Organization of Securities Commissions (IOSCO) has released a report entitled Hedge Funds and Other Highly Leveraged Institutions (HLIs). The Task Force was chaired by David Brown, OSC Chair, and included representatives of regulators in 14 jurisdictions.

The Task Force was established in December 1998 in response to the near-collapse of the prominent hedge fund Long-Term Capital Management, LP. This raised issues about the risk to regulated institutions, markets and the financial system posed by highly leveraged institutions, and the need to address gaps in the regulation of these organizations.

The major findings of the report include:

- The first line of defence against system risk in the market is strong and prudent risk management processes at the regulated firms with which HLIs trade. The report outlines certain risk management tools and processes that may be particularly helpful in reducing the risks regulated firms may face when dealing with HLIs.

- Clear regulatory expectations, enforced by oversight mechanisms and coupled with regulatory incentives to maintain or improve risk management, may encourage improved risk management processes at regulated firms. The report lists regulatory incentives that may promote improvements in risk management processes at securities firms.

- Additional transparency on HLI activities is needed to further reduce system risks and the potential for destabilization. This may be achieved through mandating enhanced disclosure to the public or improved reporting to regulators and market authorities. On balance, public disclosure of HLI activities is recommended.

Reflecting the trend towards examining public disclosure, IOSCO is participating in the Multidisciplinary Working Group on Enhanced Disclosure, along with representatives of the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors and the Committee on the Global Financial System. The Working Group is exploring what information on market and credit risk exposures should be publicly disclosed by market intermediaries, including HLIs.

"The first line of defence against system risk is strong and prudent risk management processes at the regulated firms with which HLIs trade."

Because information about HLI activities obtained from regulated firms is unlikely to provide a systematic, comprehensive overview, it probably will be necessary for HLIs to provide the information directly. At a minimum, voluntary provision of information should be encouraged, underpinned by market pressure and, if necessary, regulatory incentives.

IOSCO plans to continue to assess the progress of the ongoing international initiatives on public disclosure. Once the probable outcomes of these projects are known, IOSCO will assess if the achievable level of enhanced transparency will address the systemic risk and market destabilization concerns related to HLIs.

The text of the report is available at the IOSCO website *www.iosco.org*.

For more information, please contact **Tanis MacLaren**, Special Advisor to the Chair, (416) 593-8259.

Joint Forum Report Expected Soon

Representatives of Canada's securities, insurance and pension regulators are working together to strengthen consumer protection in the financial services sector.

Following the release last May of the Joint Forum of Financial Market Regulators' "Comparative Study of Individual Variable Insurance Contracts (Segregated Funds) and Mutual Funds", a working group was established to identify strategies for harmonizing the regulation of both products.

The Joint Forum is expected to consider the final Recommendations of the working group at their meeting scheduled in December. The Recommendations will cover areas where harmonization is warranted in the areas of product regulation, disclosure regulation, manufacturer regulation and distribution regulation. The Joint Forum has concluded that, apart from the areas highlighted in the recommendations, the regulation of seg funds and mutual funds is essentially the same.

Once the Joint Forum has approved the Recommendations, they will be released and published on the OSC's website and Bulletin.

The Joint Forum was formed in January 1999 so that Canadian securities, insurance and pension regulators could address issues of common interest arising out of the growing integration in the financial services sector.

The Joint Forum of Financial Market Regulators includes representatives of the Canadian Securities Administrators (CSA), the Canadian Council of Insurance Regulators (CCIR) and the Canadian Association of Pension Supervisory Authorities (CAPSA). The mandate of the Joint Forum is to coordinate and streamline the regulation of products and services in the Canadian financial markets.

For more information, please call **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129.

OSC Develops Proposal to Establish a Securities Fraud Initiative

As a step in starting to address the serious issue of securities-related crime, staff of the Commission has developed a proposal for a securities fraud initiative. This would see staff of the Commission, the RCMP, other police forces and the Ontario Crown working more closely together on an operational level on a number of investigations and/or information gathering projects. The main goal of the proposal would be to obtain stable funding, including funding from the OSC, to allow various law enforcement agencies to conduct more investigations and initiate criminal proceedings, when appropriate.

For more information, please call **Brian Butler**, Manager, Investigation Team at (416) 593-8286.

Auditor Assistance to Underwriters and Others

The Canadian Institute of Chartered Accountants' Assurance Standards Board (the "Board") has issued an exposure draft for comment on "Auditor Assistance to Underwriters and Others.

The draft provides guidance to auditors who are asked to assist an underwriter in connection with an offering of securities pursuant to an offering document. Matters addressed include the preparation of "long form" comfort letters and the auditor's participation at due diligence meetings. The Board believes that the proposals codify best practices already in effect in Canada and the United States.

In the view of OSC staff, these proposals are of sufficient importance to the manner in which an effective due diligence process is completed that a full and informed discussion of the implications of the proposals should take place during the

comment period. Staff encourages all interested parties to comment on the exposure draft, and to provide copies of comments to the OSC. A copy should be sent to the Office of the Chief Accountant, Ontario Securities Commission, 20 Queen Street West, Suite 800, Box 55, Toronto, Ontario M5H 3S8, or by email at *oca@osc.gov.on.ca.*

For more information, please call **Marcel Tillie**, Practice Fellow, Office of the Chief Accountant, (416) 593-8078, or **Marianne Bridge**, Sr. Accountant, Advisory Services (416) 595-8907.
22 OSCB October 22, page 6560

Year-end Exemptive Relief Applications

As part of its efforts toward ensuring a smooth transition to the Year 2000, CSA staff has announced the following filing dates and review periods for applications just before and after the New Year:

a) all multi-jurisdiction applications, whether or not filed under the Mutual Reliance Review System for Exemptive Relief Applications, should be filed before November 5, 1999, or November 30, 1999, in the case of applications relating to take over bids, if exemptive relief is required before December 31, 1999. If the application is filed after this date, there are no assurances that the application will be reviewed or the necessary relief provided before year-end;

b) for applications filed under MRRS after November 5, 1999, or November 30, 1999, as the case may be;

c) if the Non-Principal Regulators' staff review period has not commenced before December 20, 1999, or would otherwise expire between December 20 and December 31, 1999, this period will not expire prior to January 7, 2000; and

d) if the Non-Principal Regulators' opt-in period would otherwise expire between December 20 and December 31, 1999, this period will be extended to January 7, 2000.

For more information, please call **Margo Paul**, Manager, Filing Team # 1, (416) 593-8136.
22 OSCB September 24, 1999, page 5877

OSC Warns Against RRSP Scams

With RRSP "season" approaching, the Commission recently warned investors to be wary of potentially illegal investment schemes that are promoted as a way to access money tied up in Registered Plans (e.g. RRSPs, RRIFs, LIFs, and Locked-in RRSPs).

A typical scheme involves an investor cashing in money held in a Registered Plan to buy shares in a company. The company accepts full payment for the shares and then refunds or loans part (e.g. 70-80%) of the purchase price back to the investor. The result is that the company retains a significant portion of the investor's money (e.g. 20-30%) either in the form of a transaction fee or a down payment on the share purchase price. In time, the investor will be obliged to pay back the loan, or to satisfy the outstanding balance on the share purchase.

This type of transaction may breach the Ontario *Securities Act*, and could lead to financial harm or unexpected tax liabilities for the investor. In particular, the OSC noted the following in its Investor Alert:

- If the shares that are sold to the investor are a direct issuance from the treasury of the company, or if the sale of the shares is a secondary market trade which is deemed to be a distribution pursuant to the *Act*, then the sale or trade will be an illegal distribution if a prospectus has not been filed and a receipt obtained as required by the *Act*.

- Advising and trading in securities is illegal unless performed by a company or person who is registered under the regulation under the *Act*, subject to certain limited exceptions. If the person or company selling the shares is not registered and does not benefit by any exemptions under the *Act*, the person or company has avoided regulatory scrutiny, which exists to protect the public interest.

- In the event that the shares are not freely tradeable shares, the shares will be illiquid in the hands of the investor, which will directly impact the inherent value of the shares.

- Although the shares to be purchased by the investor are likely touted by the lender as having good or great growth potential, they are more likely to be shares in the capital stock of a company that may have a short and weak earnings history, few if any assets, and an uncertain potential for growth. For many investors who are investing as a means to further a retirement plan, this kind of speculative shares is wholly unsuitable as an investment.

- In the event that the company becomes bankrupt before the investor has satisfied his or her debt, the company's creditors will likely call upon the investor to repay the debt, even though the shares of the company are worthless.

The OSC advises investors considering a loan program that resembles the kind outlined in this article to first consult a professional financial adviser about investment and tax implications.

For more information, please call **Rowena McDougall**, Corporate Communications Officer, (416) 593-8117 or **Benjamin Eggers**, Investigation Counsel Enforcement, (416) 593-8051.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

CSA Adopts Mutual Reliance Review System

Beginning January 1, 2000, Canada's securities industry will benefit from more streamlined reviews of prospectuses and exemptive relief applications filed in more than one province or territory under a new mutual reliance review system.

Under the new mutual reliance review system, or MRRS, a company filing a prospectus to issue securities, filing an annual information form or filing an application for exemptive relief will generally deal with only one securities commission in Canada, its principal regulator. The securities authorities in the other jurisdictions in which a filing is made will rely primarily on the analysis and review of the principal regulator in reaching their own decisions. Each jurisdiction will have the opportunity to opt out of the MRRS for a filing should it disagree with the proposed disposition of the filing. The filer will receive a document from the principal regulator confirming the decision of all relevant jurisdictions that have not opted out of the MRRS for that filing.

"MRRS procedures for registration of securities dealers and advisers are currently being reviewed as a result of public comments."

A non-principal regulator which has opted out of the MRRS for a filing will provide written reasons to the filer and advise the principal regulator and other regulators. A non-principal regulator would then deal directly with the filer, and when appropriate, issue its own decision document.

Committees of the Canadian Securities Administrators (CSA) will be responsible for promoting consistency and communication among the securities regulators and coordinating any changes or amendments to the MRRS. Each relevant CSA committee will meet at least semi-annually to review and discuss the operation of the MRRS. It is expected that the MRRS will facilitate, over time, the harmonization of legislative requirements and administrative practices across jurisdictions and provide consistent treatment of filers in Canada.

The MRRS was established by a memorandum of understanding among the members of the CSA, which was published on October 29, 1999. The MRRS for prospectuses, annual information forms, and exemptive relief applications is set out in the following policies that were published on November 1999:

- National Policy 43-201 MRRS for Prospectuses and Annual Information Forms; and
- National Policy 12-201 MRRS for Exemptive Relief Applications.

These policies can be viewed at the Ontario Securities Commission website (*www.osc.gov.on.ca*).

Changes to the SEDAR system were made in September to accommodate the implementation of the MRRS. MRRS procedures for registration of securities dealers and advisers are currently being reviewed as a result of public comments. The instrument to implement that system is expected to be republished for further comment at a later date.

For further information, please contact **Iva Vranic**, (416) 593-8115, or **James McVicar**, (416) 593-8154.

New Mutual Fund Rules Finalized

The CSA has released a user-friendly Mutual Fund prospectus disclosure system that will enable investors to make critical financial decisions based on easily understood information.

The Rules allow for information to be distributed in two documents: the Simplified Prospectus and the Annual Information Form. The Simplified Prospectus, which must be delivered to investors, is broken into two sections. One section provides introductory information about the Mutual Fund and its Manager as well as general information about Mutual Funds. A second section gives required information about a specific Mutual Fund in a standard format. The second document, the Annual Information Form, which provides additional information that some investors may find useful, must be given to those investors who ask for it. Both documents must be written in plain language that can be understood by investors.

A second Rule, designed to expand the scope of investor protection in regulating Mutual Funds and their management, was released at the same time. The second Rule represents years of effort by the Canadian Securities Administrators to re-examine regulations (currently contained in National Policy Statement No. 39) governing the structure and management of Mutual Funds. In writing the rule the CSA considered over 400 individual comments. The Rule is in response to those comments as well as issues that have come to the attention of regulators over the past few years. Once in force, National Instrument 81-101 will replace National Policy Statement No. 36, and National Instrument 81-102 will replace National Policy Statement No. 39.

If approved by the necessary government officials, both Rules will become effective on February 1, 2000.

For more information, please contact **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129 or **Paul Dempsey**, Legal Counsel, Investment Funds, (416) 593-8091.

22 OSCB November 12, 1999, Special Supplement

CSA Staff Guidance on the Practice of Mini-Tenders

Following discussions with a number of market participants, the CSA has issued a staff Notice on the phenomenon known as mini-tenders.

Generally, a mini-tender is an offer to purchase a limited number of shares of a public company at a price below current market price. While it would rarely be in an investors' best interests to sell their shares for less than what they could get in the market, a small shareholder might choose to tender to a mini-tender in order to avoid paying sales commissions that apply to market sales. The money lost in the discounted purchase price could be made up by avoiding minimum brokerage commissions.

Whether or not tendering to a mini-tender might be attractive in these very limited circumstances, CSA would like to stress that investors should carefully examine a mini-tender to determine whether it is in their interest to tender to it.

Mini-tender offerors use the information systems put in place by market intermediaries to communicate their offer to the security holders of the target issuers. In this regard, staff expresses its view that, unlike a take over bid, there is currently no requirement under Canadian securities legislation that notice of a mini-tender must be delivered to registered holders of the securities subject to the mini-tender. Furthermore, intermediaries are not obliged under Canadian securities legislation or policies to advise their clients who are not registered holders of securities of the commencement of a mini-tender.

CSA staff has serious concerns that investors might tender to a mini-tender based on a misunderstanding of the mini-tender or the current market price of the security subject to the mini-tender. Investors might mistake mini-tenders for take over bids which historically offer a premium to the current price. In staff's opinion causing investors to tender to a mini-tender based on such a misunderstanding can be abusive of the capital markets and contrary to applicable anti-fraud provisions of certain securities legislation.

Staff feel that to avoid misunderstanding, a widely disseminated mini-tender at below current price should include the following information:

- the principal market for the securities sought to be acquired, the date of the offer, and the market price for the securities immediately before the earlier of the public announcement of the offer or the date of the offer;
- a warning that the offering price is below the current market price of those securities;
- a statement that potential investors should consult their financial adviser;
- a description of the withdrawal rights of the security holders under the offer and details for the withdrawal procedure; if no such withdrawal rights exist, a clear statement should be included to that effect;
- if applicable, a statement that the offeror could revoke its offer at any time; and
- a clear calculation of the final price to be paid for the target securities.

Depositories, participants and intermediaries who summarize and forward notices of mini-tenders should, despite the fact that they are currently not required to do so, ensure that their summaries prominently include the warning that the offering price is below the current market price of those securities and that potential investors should consult with a financial adviser.

If staff feel that mini-tenders are conducted in a manner prejudicial to the public interest, staff will recommend that appropriate action be taken, which could include a cease trade order in respect to the mini-tender or the person or company making the mini-tender.

For more information, please call **Terry Moore**, Legal Counsel, Mergers and Acquisitions, (416) 593-8133.

Year 2000: Backup of Records

To ensure the continued integrity of market participants' records during the transition to the Year 2000, CSA staff recommends that market participants back up sufficient data relating to transactions to enable the participant to continue its critical functions in the Year 2000 even if all primary data is inaccessible. Staff recommends the backup take place before midnight on December 31, 1999.

Duplicate copies of data should be kept on paper, microfilm, microfiche or any appropriate digital storage medium or system that will make the information available in an accurate and intelligible form. In determining the method of storage, market participants should ensure they will have post-Year 2000 programs that can access and read pre-Year 2000 data. The records should be kept for a reasonable time in keeping with good business practices, and at least as long as needed to comply with legislative record-keeping requirements.

For more information, please call **Levi Sankar**, Legal Counsel, Capital Markets, (416) 593-8279.

22 OSCB September 3, 1999, page 5429.

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

M.C.J.C. Holdings Inc. and Michael Cowpland

On October 14, 1999, the Ontario Securities Commission (the "Commission") laid an Information in the Ontario Court of Justice against Michael Cowpland, President and CEO of Corel Corporation, charging Cowpland with three counts of violating Ontario securities law. Cowpland's personal holding company, M.C.J.C. Holdings Inc., is also charged with one count of violating the Ontario *Securities Act* (the "Act").

One count in the Information alleges that in mid-August, 1997, Cowpland informed M.C.J.C. Holdings of a material fact with respect to Corel, other than in the necessary course

of business, before the material fact had been generally disclosed, contrary to subsection 76(2) and paragraph 122(1)(c) of the Act. A second count in the Information alleges that Cowpland, as a director of M.C.J.C. Holdings Inc., contravened subsection 122(3) of the Act in mid-August, 1997, by authorizing the commission of an offence by M.C.J.C. Holdings Inc. The offence was the sale of 2,431,200 shares of Corel for $20.4 million, which was made with knowledge of a material fact with respect to Corel that had not been generally disclosed, contrary to subsection 76(1) of the Act (also known as "insider trading"). The third count alleges that on May 20, 1998, Cowpland submitted untrue or misleading statements to the Commission, contrary to paragraph 122(1)(a) of the Act. Finally, the Information also alleges that M.C.J.C. Holdings sold 2,431,200 shares of Corel stock in mid-August, 1997, for $20.4 million with knowledge of a material fact with respect to Corel which had not been generally disclosed, contrary to subsection 76(1) and paragraph 122(1)(c) of the Act.

Mr. Cowpland and M.C.J.C. Holdings Inc., have provided an undertaking to the Commission which requires both of them to file reports with the Director of Enforcement at the Commission of any transactions either of them makes in securities of Corel Corporation on the same day that the transactions are made. The undertaking will continue in force until the earlier of staff revoking it in writing or the conclusion of the Ontario Court of Justice proceedings.

The first appearance of this matter took place in the Ontario Court of Justice on November 22, 1999. The proceedings were put over until January 14, 2000 at 9:00 a.m. and a judicial pre-trial conference was scheduled for the same day at 10:30 a.m. at Old City Hall, Toronto, Ontario.

Jennifer Lee Dewling

On November 11, 1999 the Ontario Securities Commission (the "Commission") approved a settlement agreement reached between Staff of the Commission and Jennifer Lee Dewling, the former chief operating officer of Fortune Financial Corporation ("Fortune").

In the settlement agreement, Dewling admitted that her conduct, as set out in the agreement, was contrary to the public interest. This conduct involved Dewling's supervision of Paul Tindall, a former salesperson sponsored by Fortune, and her involvement in a capital deficiency issue that arose at Fortune. In addition, Dewling admitted that she approved the use of an account at Fortune which allowed sales representatives to sell securities that they were not licensed to sell.

As part of the settlement agreement, Dewling agreed not to reapply for registration with the Commission in any capacity for a period of four months from the date of the Order. Dewling also agreed that for a further period of three months, following the expiry of the four-month period, she would not directly supervise any person in connection with that person's activities for which registration is required.

The settlement requires Dewling to successfully complete the Partners, Directors and Officers examination within four months of the date of the Commission's Order. Dewling was also prohibited from trading in securities for a period of four months from the date of the Order except that she is permitted to sell securities of which she is the beneficial owner as of the date of the Order.

In approving the settlement, the Commission said that the agreement recognized the role and duties of senior representatives of registrants and the need for registrants to meet their ongoing capital requirements.

Timothy Dowswell and Tim Dowswell Investments

At a hearing on November 15, 1999, the Ontario Securities Commission (the "Commission") ordered that Timothy Dowswell (who also carried on business as Tim Dowswell Investments) cease trading in securities permanently. The Commission originally issued a temporary cease trading order on October 10, 1995, against Timothy Dowswell, and against his father Ross Dowswell, both of Sarnia. That order was in effect pending the outcome of criminal charges brought against Timothy Dowswell. The Commission terminated the cease trading order that had previously existed against Ross Dowswell (who carried on business as Dowswell Investments).

On February 15, 1999, Timothy Dowswell was convicted of twelve charges under the *Criminal Code*. Eleven of the twelve charges were of fraud involving securities, in an amount totalling over $1.75 million. Timothy Dowswell was sentenced to three years' imprisonment on ten of the eleven fraud charges, and to two years' imprisonment on the eleventh charge. The twelfth conviction was for uttering a forged document, and resulted in a term of imprisonment of three years. All of the sentences are to run concurrently. At the time of the conduct that was the subject of the criminal charges, Timothy Dowswell was not registered under the *Securities Act*.

Hilry Hilton Neale

Following a settlement hearing on November 3, 1999, the Ontario Securities Commission (the "Commission") ordered that Hilry Hilton Neale's registration be terminated and that he cease trading permanently. Mr. Neale had pled guilty to several criminal charges which involved securities transactions in April, 1999 and June, 1999 and had been sentenced to serve a conditional sentence for a period of 18 months and to three months' imprisonment to be served concurrently to the conditional sentence. This sentence is to be followed by a probation order for three years. A term of the probation order is that Neale shall not accept from any person any sum of money for investment, whether or not the investment requires that Neale be licensed.

YBM Magnex International Inc. et al.

On November 1, 1999, Staff of the Ontario Securities Commission issued a Notice of Hearing against YBM Magnex International Inc. ("YBM"), ten directors, officers and advisors of YBM and two Canadian securities dealers for contravening the *Securities Act*. The individual respondents are as follows: Harry W. Antes, Chairman of the Board of YBM, Director and a member of the YBM Audit Committee; Jacob G. Bogatin, President, Chief Executive Officer and Director of YBM; Kenneth E. Davies, Director of YBM; Igor Fisherman, Chief Operating Officer and Director of YBM; Daniel E. Gatti, Vice-President of Finance and Chief Financial Officer of YBM; Frank S. Greenwald, Director and Member of the Audit Committee of

YBM; R. Owen Mitchell, Director and member of the YBM Audit Committee and Vice-President and Director of First Marathon Securities Limited (now known as National Bank Financial Corporation); David R. Peterson, Director of YBM; Michael D. Schmidt, Director of YBM; and Lawrence D. Wilder, Partner, Cassels Brock and Blackwell, Canadian counsel to YBM. The Co-Lead Underwriter Respondents are Griffiths McBurney & Partners and First Marathon Securities Limited (now known as National Bank Financial Corporation).

Staff's Statement of Allegations details six specific allegations, briefly summarized as follows:

- that YBM filed a preliminary prospectus dated May 30, 1997, and a final prospectus dated November 17, 1997, that failed to contain full, true, and plain disclosure of all material facts relating to the securities offered;
- that the Directors, Chief Executive Officer and Chief Financial Officer of YBM authorized, permitted or acquiesced in YBM filing a preliminary prospectus dated May 30, 1997 and a final prospectus dated November 17, 1997 that failed to contain full, true and plain disclosure of all material facts relating to the securities offered;
- that the Co-Lead Underwriters signed a certificate to a preliminary prospectus dated May 30, 1997 and a final prospectus dated November 17, 1997 which prospectuses, to the best of their knowledge, did not contain full, true and plain disclosure of all material facts relating to the securities offered;
- that YBM failed to comply with its continuous disclosure obligations by not issuing a news release forthwith disclosing the nature and substance of a material change in the affairs of YBM;
- that the members of the YBM Audit Committee (Antes, Greenwald and Mitchell), the Chief Executive Officer (Bogatin), the Chief Financial Officer (Gatti) and the Chief Operating Officer (Fisherman) of YBM authorized, permitted or acquiesced in YBM failing to comply with its continuous disclosure obligations by not issuing a news release forthwith disclosing the nature and substance of a material change in the affairs of YBM; and
- that Wilder made statements to Staff of the Commission during the course of staff's review of YBM's preliminary prospectus that, in a material respect and at the time and in the light of the circumstances under which the statements were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading.

Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall

On October 12, 1999, the Ontario Securities Commission (the "Commission") laid charges in the Ontario Court of Justice against Dual Capital Management Limited ("Dual Capital"), Warren Lawrence Wall ("Warren Wall"), the President of Dual Capital, and Shirley Joan Wall ("Joan Wall"), an officer and director of Dual Capital, including charges that Dual Capital, Warren Wall and Joan Wall traded in securities, namely, limited partnership units of Dual Capital Limited Partnership during the period from October, 1995 to December, 1996 without being registered to trade in such securities and without having filed a prospectus contrary to the provisions of the Ontario *Securities Act*. The first appearance was scheduled for Wednesday, November 24, 1999 in Barrie, Ontario concerning the scheduling of the trial.

The Commission also issued a Notice of Hearing and related Statement of Allegations against Dual Capital, Warren Wall, Joan Wall, DJL Capital Corp. ("DJL Capital"), Dennis John Little ("Little"), Benjamin Poirier ("Poirier") and Irvine Dyck ("Dyck").

The allegations made by Staff of the Commission against the respondents include the following:

- During the period from October, 1994 to December, 1996, Dual Capital, the general partner of the limited partnership Dual Capital Limited Partnership (the "Limited Partnership"), accepted subscriptions to limited partnership units (the "Units") from approximately forty-seven investors residing in Ontario and raised funds in the amount of at least U.S. $1,495,046.00.

- Dual Capital, Warren Wall, Joan Wall, Little, Poirier and Dyck traded in securities without a prospectus contrary to the requirements of the *Securities Act*.

- Certain of the Respondents were not registered in any capacity to trade in securities, and other Respondents, although registered, traded in securities contrary to their registration under the Act.

- The investment was unsuitable for the clients who invested, and each investor did not receive the Offering Memorandum in respect of the offering of the Units.

- Dual Capital, Warren Wall and Joan Wall failed to disclose to investors that funds accepted from investors for the purchase of Units were not used to "facilitate trades in financial instruments" as set out in the Offering Memorandum, and further failed to disclose that investors' funds instead were used for payments to various companies and persons.

- The promoter, DJL Capital and its President, Little, received payments from Dual Capital in the amount of approximately U.S. $161,525.00 with knowledge that the source of payments was funds received from investors and not income earned from any investment made by the Limited Partnership.

- Representations made in promotional material were misleading to investors and did not state that the securities were speculative contrary to the statement made in the Offering Memorandum.

The first appearance in respect of the Commission matter was held Wednesday, November 10, 1999. The Commission matters have been adjourned pending the completing of the Provincial Offence proceeding.

Anwar Heidary and James Sylvester

On September 7, 1999, Staff of the Ontario Securities Commission (the "Commission") issued a Notice of Hearing and Statement of Allegations against Anwar Heidary and James Sylvester alleging that the Respondents sold securities to Ontario investors without being registered with the Commission. Staff also allege that the securities which were sold were not qualified by a prospectus and none of the prospectus exemptions was available for the distribution of the securities. The hearing of this matter is scheduled to commence on January 24, 2000.

CCI Capital Canada Limited

The Ontario Securities Commission ("Commission") issued reasons for decision on October 7, 1999 in relation to a hearing held on September 9, 1999 involving CCI Capital Canada Limited ("CCI"), a mutual fund dealer which, at that time, was registered with the Commission. On September 9, 1999, the Commission suspended the registration of CCI for a period of at least three months commencing on September 23, 1999. Staff of the Commission alleged that CCI failed to comply with terms and conditions imposed on its registration by the Commission which required CCI to file certain financial information with the Commission on a monthly basis. In addition, staff alleged that CCI failed to meet minimum capital requirements as of May 31, 1999 in the amount of $38,725.00.

In its reasons, the Commission held as follows:

> The requirements imposed on registrants for the filing of financial statements and other information with the Commission are imposed for the protection of their customers, and these requirements are necessary for the protection of those customers.
>
> It is no light matter for a registrant to consistently fail to comply with these requirements, and even more serious for a registrant to fail to comply with terms and conditions imposed as a result of failure to comply with the regulatory requirements. It is not good enough to argue that no one has been injured by the failure. It is the possibility of injury with which we have to concern ourselves in matters such as this one.

The Commission also held that the order will clearly indicate the seriousness with which the Commission regards the failure of a registrant to comply with its obligations to duly and punctually file the financial statements and other material which it is obliged to file.

Noram Capital Management, Inc.

The Ontario Securities Commission (the "Commission") has suspended the registration of Noram Capital Management, Inc. ("Noram"), an investment counsel portfolio manager registered with the Commission, for a period of at least six months commencing on October 7, 1999. Staff of the Commission had alleged that Noram failed to meet minimum working capital requirements since June 30, 1998 in amounts ranging up to $948,909. In addition, Staff alleged that Noram failed to comply with terms and conditions imposed on its registration by the Commission which required Noram to file certain financial information with the Commission on a monthly basis.

In addition to suspending Noram's registration, the Commission ordered Noram to provide to the Commission quarterly and monthly financial statements, which are to be accompanied with a working capital calculation, until further order of the Commission. The registration of Noram has been suspended for a period of six months or until Staff has received audited financial statements establishing that the capital deficiency has been made good, whichever is the longer period. The Commission also ordered that Noram send a letter by registered mail to each of its clients and to its dealer First Marathon Correspondent Network, to notify them of the suspension.

In its reasons, which were issued on October 19, 1999, the Commission found that the delivery to Staff of false and misleading financial statements was an intentional act of Andrew Willman, Noram's president. The Commission stated the following:

> There is no question that failure of a registrant to meet its minimum free capital requirements is a serious matter, failure to do so for a protracted period is an even more serious one, and supplying false and misleading financial statements to staff to conceal the failures is very serious indeed ... In proceedings of this sort, it is not our function to punish a registrant, but it is our function to impose such sanctions, if any, as we consider necessary to protect the marketplace and investors from a repetition of the improper conduct which we find to have been engaged in by the registrant ...We considered whether revocation, rather than suspension, of Noram's registration might be the proper sanction in these circumstances. However, we concluded that it was not necessary to go that far in this case in order to protect the marketplace. We concluded that, once it is established by audited financial statements that Noram had made good its regulatory capital deficiency, and after an appropriate period of suspension to recognize the seriousness of Noram's actions and serve both as a deterrent to Noram and as a general deterrent, it would be sufficient to impose additional terms and conditions on Noram's registration...

Alexis Capital Advisors Inc.

At a hearing on August 31, 1999, the Ontario Securities Commission ("Commission") approved a settlement agreement entered into between staff of the Commission and Alexis Capital Advisors Inc. ("Alexis"), a mutual fund dealer and limited market dealer.

In a Notice of Hearing and Statement of Allegations issued on August 25, 1999, Staff of the Commission alleged that Alexis had failed to deliver its audited financial statements within ninety days of its financial year-end, contrary to Ontario securities law. Alexis had previously failed to comply with reporting requirements and had failed to maintain the required minimum capital.

The Commission ordered that certain terms and conditions be imposed on Alexis' registration, including requirements that Alexis deliver monthly financial statements to the Commission, and that Alexis maintain an increased minimum capital. In addition, the Commission reprimanded Alexis.

James H. Ting, Frank E. Holmes, Chuck C.H. Tam, Douglas A.C. Davis and Kenneth C. Smith

At a hearing on Wednesday, October 6, 1999, the Ontario Securities Commission ("Commission") considered whether a Temporary Cease Trading Order, dated September 22, 1999, made against James H. Ting, Frank E. Holmes, Chuck C.H. Tam, Douglas A.C. Davis and Kenneth C. Smith should be extended.

The respondents are all current or former officers and/or directors of Semi-Tech Corporation ("Semi-Tech"). The Temporary Cease Trading Order prohibited the respondents from trading in any securities of Semi-Tech, its subsidiary, The Singer Company N.V. ("Singer") or Singer's subsidiary, G. M. Pfaff A. G. until two business days following receipt by the Commission of such filings as Semi-Tech is required to make under Ontario securities law or until further Order of the Commission. The Temporary Cease Trading Order was effective September 22, 1999 and was to expire on October 7, 1999. At the hearing on October 6, 1999, the Commission made a final Order on the same terms as the Temporary Cease Trading Order.

David Singh and Paul Tindall

On October 14, 1999, the Ontario Securities Commission (the "Commission") has issued a Notice of Hearing and Statement of Allegations against David Singh ("Singh"), the former president of Fortune Financial Corporation ("Fortune") and Paul Tindall ("Tindall"), a former salesperson employed by Fortune.

Staff of the Commission allege that Tindall sold securities to his clients without disclosing his personal interest in the issuer of the securities and on the basis of misrepresentations made to induce clients to invest. The investment was wholly unsuitable for the clients who invested. In addition, the securities which Tindall sold contravened the prospectus requirements of the *Securities Act*. When Tindall became aware of this and other illegalities, he attempted to conceal the problems in order to deceive his clients, Fortune and the regulatory authorities. Tindall eventually discovered that the investment was a fraud, and he made further misrepresentations to his clients to prevent them from speaking to the regulatory authorities.

Staff also made other allegations against Tindall in relation to his conduct while a salesperson at Fortune including selling shares on the same day that he purchased those securities for his clients' accounts and failing to keep the required documentation in respect of his clients.

Against Singh, Staff allege that he was aware of Tindall's activities but took no steps to discipline, control or monitor Tindall. In fact, it is alleged that Singh knowingly permitted Tindall to sell investments that were not approved by Fortune and he acquiesced in Tindall's scheme to falsify documents to attempt to conceal the illegalities of the investment referred to above.

Allegations are also made that Singh permitted mutual fund representatives to trade securities for which they were not registered by allowing them to use his representative code. It is also alleged that Singh sold securities subject to a hold period imposed by securities law when Singh knew that the hold period existed and prohibited his sales.

The hearing of this matter will be scheduled at the next appearance on December 16, 1999 at 10:00 a.m.

Michael McGuigan

On September 23, 1999, the Ontario Securities Commission (the "Commission") approved a Settlement Agreement entered into between Staff and Michael McGuigan ("McGuigan"). The settlement relates to a Notice of Hearing and Statement of Allegations which were issued against McGuigan on September 9, 1999 in which Staff alleged that McGuigan provided advice on investing in securities through an Internet newsletter called "WealthLine".

In the Settlement Agreement, McGuigan admitted that his conduct as the author of WealthLine was contrary to the public interest in that he acted as an adviser without registration in contravention of the *Securities Act*, he recommended the purchase and sale of securities in a publication without disclosing his interest in those securities and he caused and permitted misrepresentations to appear on the WealthLine webpage which were designed to induce individuals to subscribe.

The Commission approved an Order that McGuigan is prohibited from trading in securities for a period of two years except that he is permitted to sell securities of which he is the beneficial owner as of the date of the Commission's Order.

RECENT SPEECHES

The following are excerpts from recent speeches by OSC executives.

Remarks by David Brown, Q.C., OSC Chair, 2nd International Forum on Financial Markets, November 22, 1999

"What kind of regulatory architecture is required for the 21st century?

As is so often the case when discussing securities regulation, that question begs another question: How will patterns of investing evolve in the 21st century?

It is not an easy area in which to make predictions. Consider the changes that have come about in the nature of investing over just the past few years; the level of participation; ability to trade in virtually any market while sitting in your own home; range of investment instruments; utilization of technology; access to research; ease, speed, and transparency of trading. I am not about to try to draw a picture of investing over the next hundred years. It reminds me of the words of the legendary Hollywood producer, Samuel Goldwyn: "Never make predictions, especially about the future."

But if there is one thing history has demonstrated about investing, it is this: People are not about to restrict their investment decisions strictly by geography or jurisdiction. People will invest as widely as technology allows, and the law permits. In a world of open financial borders and real-time communications, there is one market: the world.

The regulatory architecture for the 21st century must take that into account. Attempts to value the global volume of securities and derivatives traded cross-border are difficult, to say the least. But evidence that capital markets are becoming more international in character is ubiquitous.

The stock exchanges in New York, London, Amsterdam, Paris and Singapore, along with NASDAQ, all have a substantial number of foreign issuers. Private-sector pension funds also hold significant foreign assets.

But regulation still exists only at the domestic level.

The transnational nature of global trading has removed it from the full jurisdictional reach of domestic regulation. How does one ensure proper regulation of this global potpourri? Especially when an increasing number of regulatory issues do not just cross political jurisdictions, but also sectoral lines — including banking and insurance, as well as securities?

Clearly, one of the greatest challenges facing regulators is the need to overcome the gap caused by a lack of formal regulatory structures at the international level. How do we ensure the kind of investor confidence that has helped to spur growth over the course of this century?

We now have a global securities market — does that demand a global securities watchdog?

National sovereignty is not about to simply disappear. What kind of arrangements are required — and realistic — to establish at the international level the discipline that exists at the domestic level? And what are the world financial regulators and financial industries doing to deal with this question?

The answer to that last question, in my opinion, is quite a bit. An international regulatory architecture is taking shape. It is not fully built up, the infrastructure is not all in place, and the lines of decision making are not wholly connected from top to bottom.

But consider the international institutions that exist, the cross-border and cross-industry channels of communication that have been opened, and the multinational endeavors that have been launched.

A basic network is emerging.

It includes channels for regulators. The Basle Committee on Banking Supervision provides a rule-setting body in the field of banking supervision. The International Association of Insurance Supervisors promotes high standards in insurance supervision. IOSCO promotes the integrity of securities and derivatives markets among its 92 member countries.

"The creation this year of the Financial Stability Forum... offers the prospect for a common convergence point — or at least the early beginnings of one."

The emerging network includes channels for central banks, through the Committee on the Global Financial System. For stock exchanges, through the FIBV. For finance ministers, through the G7, the G10 and now the G22.

A virtual alphabet soup of agencies provides coordination, information, analysis, and monitoring — including the OECD, IMF, World Bank and BIS. The creation this year of the Financial Stability Forum, using the format proposed by the President of the German Bundesbank, offers the prospect for a common convergence point — or at least the early beginnings of one.

At this point, how well do the channels come together?

I would like to address that question from my own perspective, as vice-chair of the Technical Committee of IOSCO, and as chair of the IOSCO Task Force on hedge funds and highly leveraged institutions.

IOSCO is clearly committed to enhanced global cooperation among securities regulatory bodies around the world. The preamble to the organization's by-laws includes a commitment to better regulation on both the domestic and international level, in order to maintain just, efficient and sound markets.

IOSCO recognizes that sound domestic markets are essential for a strong domestic economy. But increasingly, its focus has turned to the integration of these markets into a global one. The goal is global cooperation: among regulators, between regulators and standard setters, and between regulators and market participants. IOSCO is pursuing these goals in such areas as common disclosure standards, uniformity in accounting principles, and common principles for securities regulation."

"In the Best Interests of Investors: Strengthening Fund Governance", John A. Geller, Q.C., Vice-Chair, OSC, at the Mutual Funds Symposium, The Canadian Institute, Toronto, October 18, 1999.

"Investors expect and deserve a high standard of conduct from the stewards of their money. Without this we will be unable to maintain their confidence in our capital markets. Someone, in addition to the regulators, must be looking out for investors' interests.... Securities legislation has always required a degree of "fund governance". The Securities Act (Ontario), and the securities acts of the other provinces, require a manager of a mutual fund to discharge its responsibilities honestly, in good faith and in the best interests of the mutual fund, and in a prudent and responsible manner.... We are concerned that these rules are not enough in today's climate of increasing competition for the dollars of the elusive investment fund investor.

Independent scrutiny of fund affairs by an independent group is a big part of fund governance, but fund governance is not only about fund boards. Other elements of fund governance include:

- Improving the information given to investors at point of sale and on a continuous basis thereafter.
- Clarifying the rights of investors in the face of fundamental changes to the fund operations.
- Clear fiduciary duties and established common ethical responsibilities of the various entities in the mutual fund complex.
- Ensuring that conflicts of interest for the entities in the mutual fund complex are minimized.
- Ensuring that the mutual fund complex understands and follows the rules set down by the regulatory regime.

The Canadian Securities Administrators needs to grapple with the need for increased scrutiny of fund managers by independent groups who have responsibility to look after the investors' interest. We want to avoid if we can dictating any particular structure for this governance mechanism. We should

also consider if there is any alternative to an independent board or advisory committee. For example, could independent trustees do the trick, or perhaps custodians or fund auditors could provide more scrutiny.

These are difficult and priority issues for the Commission and the other members of the Canadian Securities Administrators. We cannot, and should not, work through these issues alone. You deal with the issues surrounding fund governance on a daily basis. You should be, and indeed must be, thinking about the same issues we are. We have concluded improved fund governance is not a superficial, unnecessary concept important only to improve the public face of the mutual fund industry. Investors who are relying on mutual funds for their retirement and other savings needs deserve nothing less than our concerted efforts to ensure that the words of the Securities Act requiring fund managers to act in the best interests of mutual funds are not, to paraphrase Chairman Levitt, "empty words in a statute"."

Remarks by Howard I. Wetston, Vice-Chair, OSC, Canadian Investor Securitization Conference, November 8-9, 1999

"While bank deposits have declined, share ownership has climbed. The Toronto Stock Exchange estimates that close to 40 percent of adult Canadians are in the markets, through pension funds, mutual funds, or retail investments. In the early 1980s, stocks represented the fifth largest form of investment for Canadians. Today it's number two, behind home ownership. A nation of savers has become a nation of investors.

As for the Internet, you can hardly have a conversation without it coming up. In fact, it's too big for anybody in any business to ignore. We are in the midst of the equivalent of an industrial revolution.

Look at the reach. More than 160 million people around the world have Internet access — about six times the size of the Canadian population. Look at the growth. *The Industry Standard* reports that in the past year the number of Internet users increased 55 percent...

Technology is providing the vehicle for changing the nature of investing — providing speed, lower costs, convenience, accuracy, and independence. It has helped to increase individual investor participation in the markets, disseminate information about listed companies, and provide the basis for new waves of democratization of corporate decision-making. That includes opening up of analyst conference calls to investors via the Internet, and giving shareholders the opportunity to attend corporate annual meetings over the Net, in real time, with the chance to pose questions via e-mail.

Issuers are using the Net to disseminate information about corporate finance, products, price histories, ratings information, and expected earnings release dates. All of this is reducing the discrepancy in the information available to both large and small investors.

The Internet is providing investors with empowerment. Individual investors now have access to the information and trading strategies that until recently were the exclusive preserve of market-making firms. Power that used to reside solely on Wall Street or Bay Street is now available on Main Street. A few small Canadian brokerages are even giving away their research to anyone who visits their web site. If you can't do the research in-house, your partner might for example, Versus operates E*Trade which has teamed up with Yorkton Securities for its research. But, many are asking, where is the line between empowerment and exuberance? Online trading and day trading have both taken off in the United States at a faster clip than in Canada. That gives us the advantage of learning from the US experience. During the first quarter of this year, the average number of online trades per account at the leading US online broker increased 21 percent. Obviously competition and product differentiation are positive developments. But, for example, an article in the Journal of Finance, based on a review of nearly 78,000 households dealing with a large discount broker between 1991 and 1996, found that investors who traded the most earned an annualized return of 11.4 percent, compared to 18.5 percent for those who traded infrequently."

"Investors must set their own goals and measure their own risk tolerance"

While the web knows no borders, the law still does. Offerings may be permitted in some jurisdictions but not in others. The entire burden of evaluating the information rests with the investor. And regulators must determine what is and is not part of the prospectus. What about hyper links–those highlighted words on the web page that connect you to an entirely different web site? Which hyper links can an issuer properly attach to a prospectus and which should they not?

Investors must set their own goals and measure their own risk tolerance. If they seek to take advantage of new trading mechanisms, they must also seek to understand them, learn to use them, and recognize their inherent risks.

If they wish to substitute their own expertise for that of a professional broker, then they must ensure that their expertise is up to the task.

Most of all, investors must understand the difference between investing and gambling. Technology and enhanced competition create choices for investors.

Regulators must provide investors with a framework and investor protection is obviously a priority. Brokers must respect that framework. Investors must be aware of the risks and take the responsibility to operate within it."

(Government Proposes Amendments)

the Commission's efforts in improving Ontario's legislative and regulatory framework.

Many of the proposed amendments to the *Securities Act* will help the Commission to better carry out the powers and duties conferred upon it under the *Securities Act* and to discharge its mandate more effectively. Such amendments are intended to strengthen the securities regulatory framework in Ontario, to achieve harmonization with other Canadian securities regulators and to facilitate implementation of the virtual national securities commission. Many of the proposed amendments are aimed at increasing investor protection, streamlining the regulatory process and promoting operational efficiency between jurisdictions. Some of the proposed changes are technical amendments to correct errors and clarify current provisions.

Among the most significant changes to the *Securities Act* are proposed amendments to:

- Give the Commission the power to order a person or company to pay the costs of a hearing or investigation and to prohibit someone from acting as an officer or director of an issuer.
- Require insider reports to be filed within 10 days of trades, not 10 days after month end. This will ensure that the public has access to insider trading information on a more timely basis than is currently the case. In addition, amendments to the Commission's rule-making authority will also afford the necessary flexibility to vary any of the timeframes prescribed under the Act.
- Give the Commission the ability to deem issuers to be reporting issuers either upon their own application or upon the application of the Director. This amendment provides a further means of protecting the investing public by enabling the Commission to order that in appropriate cases, issuers with publicly traded securities are subject to the requirements of the Act.

"Give investors who purchase securities under certain prospectus exemptions a statutory right of action against the issuer or selling shareholder if the disclosure document contains a misrepresentation."

- Broaden the Commission's power to deem that a reporting issuer has ceased to be a reporting issuer by removing the requirement that an applicant must have fewer than fifteen security holders whose latest address is shown on the books of the company as in Ontario.
- Establish that the Freedom of Information and Protection of Privacy Act does not prevent the exchange of information with other regulators, stock exchanges, self-regulatory organizations and law enforcement agencies, both in Canada and elsewhere, nor does it require disclosure of information so obtained. In the context of today's global capital markets, this provision enhances the ability of the Commission to duly administer Ontario securities law and regulate the capital markets in Ontario.
- Extend the time periods required for take-over bids, permit bids to be commenced by advertisement and certain related matters. These amendments were all recommended in the Report of the Committee of the Investment Dealers Association of Canada to review Take-Over Bid Time Limits (the "Zimmerman Committee Report"). Such amendments have already been made by a number of other Canadian jurisdictions, but their proclamation has been deferred pending legislative change in all jurisdictions, including Ontario.
- Ensure that the Commission has sufficient authority to make rules in the areas where it was clearly intended that the Commission have the power to convert existing policy statements into rules as appropriate and where experience in the reformulation process has shown the existing provisions are not broad enough.
- Give investors who purchase securities under certain prospectus exemptions a statutory right of action against the issuer or selling shareholder if the disclosure document contains a misrepresentation. This right replaces the existing contractual right of action that is required to be provided to certain private placees pursuant to the Regulation. The required contractual right of action was originally intended to be an interim measure to be replaced by an appropriate statutory right of action. The new statutory right of action is similar to the existing statutory right of action given to a purchaser under a prospectus.
- Remove the ability of issuers to become "reporting issuers" by filing a securities exchange take-over bid circular. The use of a securities exchange take-over bid circular to become a reporting issuer raises investor protection concerns because a take-over bid circular, unlike a prospectus, is not subject to a review process and does not require certification that it "constitutes full, true and plain disclosure of all material facts."
- Allow disclosure by an investigator of information obtained for the purpose of an investigation or hearing without the need to obtain additional Commission orders and subject to certain conditions.

Most of the proposed amendments to the *Commodity Futures Act* seek to update that Act by incorporating the changes that have been made to the *Securities Act* since 1994, such as those relating to self-regulatory organizations, enforcement and rule-making. In addition, the proposed amendments include parallel amendments to those now being proposed to the *Securities Act*.

The proposed amendments to the *Toronto Stock Exchange Act* provide the framework for demutualization to allow continuance of the Toronto Stock Exchange under the *Ontario Business Corporations Act*. The proposed amendments contemplate approval of the application of continuance by both the Minister of Finance and the Ontario Securities Commission.

To view a copy of the proposed amendments, readers are invited to visit the Commission's website *osc.gov.on.ca*.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245 or **Rossana Di Lieto**, Legal Counsel, (416) 593-8106 or **Susan Greenglass**, Legal Counsel, (416) 593-8140.

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The OSC web site, www.osc.gov.on.ca includes:
Information on the OSC; Investor Information; Rules and Regulations, Enforcement Information and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 3, Issue 1

WINTER 2000

inside...

FEATURE

New Integrated Disclosure System Would Focus On Continuous Disclosure

The Canadian Securities Administrators (CSA) have published a concept proposal on a proposed Integrated Disclosure System (IDS) that would require participating issuers to provide more comprehensive continuous disclosure. The system is intended to raise the standard of disclosure provided to the marketplace on a continuous basis while making new financings faster and more efficient.

The CSA are asking for comment by June 1, 2000 and aim to introduce the system on a two-year pilot project basis in 2001.

At present, standards for prospectus disclosure are higher than for continuous disclosure, although the vast majority of trading activity occurs in the secondary markets. The proposed IDS would better integrate the type and extent of the information that issuers must provide to investors in both the primary and secondary markets. In particular, the IDS would change securities regulation in the following areas:

(continued on page 10)

INDEX

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Changes to General Prospectus Requirements Proposed

On December 17, 1999, the OSC published for third comment proposed changes to proposed Rule 41-501 - General Prospectus Requirements. Among the most significant changes being proposed to the rule are:

- The addition of limited exceptions to the audit requirement for "junior issuers";
- The revenue test for determining the significance of an acquisition to an issuer has been replaced by an investment test;
- The significance tests are now to be applied at two points in time: first, at the time of acquisition and, again, at the time of filing the preliminary prospectus; and
- The addition of quantitative standards for determining whether a disposition is significant to the issuer.

The proposed changes to proposed Rule 41-501 were published in a supplement to the OSC Bulletin.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245, **Kathryn Soden**, Director, Corporate Finance, (416) 593-8149, **Julie Bertoia**, Sr. Accountant, Corporate Finance, (416) 593-8083, or **Rossana Di Lieto**, Legal Counsel, General Counsel's Office, (416) 593-8106.

(1999) 22 OSCB (LF Supp 2) December 17, 1999

Proposed Changes to Short Form Prospectus Distributions

On December 17, 1999, the CSA published proposed changes to proposed National Instrument 44-101 - Short Form Prospectus Distributions, for third comment. The substance and purpose of the proposed Instrument is to reformulate National Policy 47 - Prompt Offering Qualification System. Among the most significant of the proposed changes to the Instrument are the following:

- Each type of qualification criteria has been expanded to require an issuer filing a preliminary short form prospectus more than 90 days after its most recently completed year end to have filed its financial statements for that year in order to be qualified to file a short form prospectus;
- The revenue test for determining the significance of an acquisition to an issuer has been replaced by an investment test;
- The significance tests are now to be applied at two points in time: first, at the time of acquisition and, again, at the time of filing the preliminary prospectus;
- Quantitative standards for determining whether a disposition is significant to an issuer have been added; and
- The requirement to provide selected quarterly information and discussion has been revised to ensure that MD&A distributed to shareholders includes both the quarterly results and a discussion of those results.

The proposed changes to proposed National Instrument 44-101 were published in a supplement to the OSC Bulletin.

For more information, please call **Gary Tamura**, Legal Counsel, Corporate Finance, (416) 593-8119, **Julie Bertoia**, Senior Accountant, Corporate Finance, (416) 593-8083 or **Iva Vranic**, Manager, Corporate Finance, (416) 593-8115.

(1999) 22 OSCB (POP Supp 2) December 17, 1999

Rule on OTC Derivatives Out for Comment

On January 7, 2000, the OSC republished for comment Proposed Rule 91-504 Over-the-Counter Derivatives and the Companion Policy. The comment period expired on February 6, 2000.

The Proposed Rule deals with the regulation of transactions involving OTC derivatives in Ontario. It provides complete exemptions from Ontario securities law for some transactions and provides exemptions from the registration and prospectus requirements of the Act for other transactions.

Key changes in the Proposed Rule and Companion Policy include the amendment to the definitions of "exempt transaction" and "OTC derivatives" transaction and the decrease in the minimum capital threshold for certain institutions to $25 million.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257 or **Tracey Stern**, Legal Counsel, Market Regulation, (416) 593-8167.

(2000) 23 OSCB January 7, 2000 Page 51

Commission Makes Rule on Insider and Issuer Bids, Going Private and Related Party Transactions

The OSC has made its Rule and Companion Policy (Rules 61-501 and 61-501 CP) on insider bids, issuer bids, going private transactions and related party transactions.

The Rule reformulates OSC Policy Statement No. 9.1, maintaining such protections as independent valuations, majority of minority approval and enhanced disclosure. The Rule and Companion Policy have been revised to incorporate certain changes suggested in comments previously received by the Commission.

If the Minister of Finance does not approve the Rule, reject the Rule or return it to the Commission for further consideration, or if the Minister approves the Rule, the Rule will come into force on May 1, 2000.

For more information, please call **Stan Magidson**, Director, Take Over/Issuer Bids, Mergers & Acquisitions, (416) 593-8124.

23 OSCB February 11, 2000 Page 965

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

Five-Year Advisory Review Committee Appointed by the Minister of Finance

In December 1999, the Minister of Finance appointed an advisory committee to review the legislation, regulations, and rules relating to matters dealt with by the Commission and the legislative needs of the Commission. The Securities Act provides for a legislative review at regular five-year intervals. This is the first of such reviews. The advisory committee will be seeking public comment and will prepare a report of its review and recommendations for the Minister.

The advisory committee will be seeking public comment and will prepare a report of its review and recommendations for the Minister.

The advisory committee is chaired by Purdy Crawford who is the Chairman of Imasco Limited and acts as a director on the boards of several public companies. The other members of the committee are: Carol Hansell, Partner, Davies Ward & Beck; William Riedl, President and C.E.O. of Fairvest Securities Corporation; Helen Sinclair, C.E.O., Bank Works Trading Inc.; David Wilson, Co-Chairman, Scotia Capital and; Susan Wolburgh Jenah, General Counsel, Ontario Securities Commission.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245.

Corporate Finance Branch Reorganization

As of December 18, 1999, the Administration Document Management (ADM) Team in the Corporate Finance Branch was dissolved and ADM staff were reassigned to existing Corporate Finance Teams.

The Financial Examiners (Ann Mankikar, Mary Ann Slocombe, and Josh Cottrell), Continuous Disclosure Assistant (David Mattacott), and Continuous Disclosure Clerk (Corrie Rees-Jones) were transferred to the Continuous Disclosure Team under Heidi Franken's leadership.

The Selective Review Officer (Fareeza Baksh) and the Applications Administrator (Violet Persaud) were transferred to Corporate Finance Team 1 under the leadership of Margo Paul.

The Review Officers (Merle Shiwbhajan and Elizabeth Henry) and the Administrative Support Clerk (Moses Seer) were transferred to Corporate Finance Team 2 under the leadership of Iva Vranic.

Insider reports will be reviewed by the Continuous Disclosure Team going forward.

Telephone numbers are unchanged. New fax numbers are:

Director's Office/Advisory Services/ Take Over Bid Team	**Fax # (416) 593-8177**
Continuous Disclosure Team	**Fax # (416) 593-8252**
Corporate Finance Team 1	**Fax # (416) 593-8244**
Corporate Finance Team 2	**Fax # (416) 593-3683**
Dedicated Insider Trading	**Fax # (416) 593-3666**

For more information, please call **Kathryn Soden**, Director, Corporate Finance Branch, (416) 593-8149.

Court Rules OSC Can Sanction Lawyers

On February 15th, the Ontario Superior Court of Justice ruled that the Ontario Securities Commission has jurisdiction to sanction lawyers. Lawrence Wilder, a lawyer for YBM Magnex International, had argued that only the Law Society of Upper Canada has the right to decide if an Ontario lawyer has behaved in an improper manner.

A panel of three judges rejected that argument. Mr. Justice James Southey, speaking on behalf of the panel, said that the OSC "has the jurisdiction to deal with the proceedings".

Preliminary Corporate Disclosure Survey Results

In 1999, the Commission's Continuous Disclosure Team sent a voluntary survey to 400 public companies to gather general information on corporate disclosure policies and practices. The OSC received 170 responses – a 43 percent response rate.

Preliminary results of the survey show:

- 71 percent of the respondents do not have written corporate disclosure policies.
- 45 percent of respondents with market capitalization greater than $500 million have written policies, while 20 percent of those with market capitalization under $500 million do.
- 81 percent of respondents have one-on-one meetings with analysts.
- 2 percent of the respondents do not comment on draft analyst reports.
- 27 percent of respondents do not have a "black-out" period prior to scheduled earnings releases during which no market sensitive information is provided.
- 19 percent of respondents broadcast their quarterly conference calls via the Internet or other means.

81 percent of respondents participate in one-on-one meetings with analysts.

A report on the final results will be released this year. OSC Staff are currently analysing the findings and will consider them in determining what follow-up action is necessary and appropriate. As well, staff members are monitoring developments in the US following the Securities and Exchange Commission's announcement on December 15, 1999 of the proposed rule, Regulation FD (Fair Disclosure). This rule would bar companies from selectively disclosing material information.

For more information, please call **Heidi Franken**, Manager, Continuous Disclosure Team, Corporate Finance Branch, (416) 593-8249.

23 OSCB January 7, 2000 Page 9

Financial Stability Forum

David Brown, Chair of the Ontario Securities Commission, has joined with other senior executives from the international regulatory community in the Financial Stability Forum working group charged with reviewing and recommending actions to reduce the destabilising potential of highly leveraged institutions. The group is made up of top staff members from the world of banking and securities as well as the International Monetary Fund. The parent committee - the Financial Stability Forum (FSF)- was created to promote international financial stability, improve the functioning of markets, and reduce systemic risk.

The Forum brings together on a regular basis national authorities responsible for financial stability in significant international financial centres, international financial institutions, sector-specific international groupings of regulators and supervisors, and committees of central bank experts. The FSF seeks to co-ordinate the efforts of these various bodies.

Demutualization of the TSE

The OSC has been developing an appropriate regulatory framework to address the demutualization of The Toronto Stock Exchange. Demutualization provides for the continuance of the Exchange as a for-profit corporation. Following demutualization, the Exchange would be owned by shareholders instead of member firms based on holding a seat.

Legislation amending the current Toronto Stock Exchange Act and providing for the continuance of the Exchange under the Business Corporations Act (Ontario) received Royal Assent on December 14, 1999.

The OSC approved the continuance of the Exchange

Pursuant to the legislation, the Commission must approve the continuance before it can become effective. As a condition of approval, the OSC requested that the Exchange submit to a recognition process. Proposed criteria for recognition were developed. In the December 24, 1999 OSC Bulletin, the OSC requested comment on the proposed criteria for recognition of the Exchange. The OSC also published the TSE's commentary on the OSC's proposed recognition criteria. The proposed recognition criteria address several areas including: corporate governance, access, financial viability, TSE Regulatory Services (TSE RS). The comment period ended January 31, 2000. Staff considered the comments that were received. On February 15, 2000, the OSC approved the continuance of the Exchange on the basis that the Exchange has accepted the terms and conditions in the recognition order.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257, **Susan Greenglass**, Legal Counsel, Market Regulation, (416) 593-8140, or **Jennifer Elliott**, Legal Counsel, Market Regulation, (416) 593-8109.

22 OSCB December 24, 1999 Page 8283

Third Annual Investor Education Week

April 10th will see the launch of the third annual Investor Education week in Ontario, an event that grew out of a project started by the Council of Securities Commissions of the Americas or COSRA. COSRA members, including the Ontario

Securities Commission, have agreed that this year's theme is "Get the facts. It's your money. It's your future."

Under that banner, all COSRA members, including the securities commissions in Canada, will be carrying out a number of projects to highlight important market changes and risks that investors should be aware of to protect themselves at the start of the 21st century.

April 10th will see the launch of the third annual Investor Education week in Ontario.

For more information, please call **Nancy Stow**, Manger, Investor Education, (416) 593-8297.

Education Program on NI 81-102 Mutual Funds and NI 81-101 Mutual Fund Prospectus Disclosure

Two new mutual fund rules — NI 81-102 Mutual Funds and NI 81-101 Mutual Fund Prospectus Disclosure — replaced NP 36 and NP 39 respectively on February 1, 2000.

The OSC has been offering sessions on the new rules and their implications.

In order to facilitate a smooth and efficient transition to the new regime, the Ontario Securities Commission has been offering sessions to educate legal advisers and mutual fund companies on the new rules and their implications. During these sessions, the OSC will outline the expectations of the Canadian Securities Regulators with respect to the mutual fund disclosure required by NI 81-101 and answer any questions on NI 81-102. Members of the Commission's Investment Funds team will be available to conduct informal sessions at private offices during January through to May.

If you are interested in scheduling a session, please contact **YuMee Chung**, Legal Counsel, Investment Funds Team, (416) 593-8076.

Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations

On November 30, 1999, the OSC executed The Declaration on Cooperation and Supervision of International Futures Markets and Clearing Organisations.

The Declaration is an agreement between certain supervisory authorities of futures exchanges and clearing organizations. It serves to facilitate the sharing of information necessary to strengthen regulatory supervision, minimize systemic risk, prevent or limit potential abusive or manipulative practices and enhance customer and investor protection.

The Declaration will become effective subject to the approval of the Minister of Finance.

For more information, please call **Tracey Stern**, Legal Counsel, Market Regulation, (416) 593-8167.

23 OSCB January 7, 2000 Page 9

Investor Alert on Heritage Bonds

The OSC is warning consumers to use extreme caution if solicited to buy an investment called Ontario Heritage Bonds.

The flyer claims that the bonds are sponsored and guaranteed by the Government of Ontario.

OSC Staff recently became aware of a flyer promoting the Ontario Heritage Bond Program as a way for investors to earn a 10 percent return on their investment. The flyer, which appears on letterhead similar to some government agencies', claims that the bonds are sponsored and guaranteed by the Government of Ontario. In fact, the Government of Ontario has not issued, sponsored or guaranteed any bonds in the name Ontario Heritage Bonds.

The Commission warns investors to use extreme caution if solicited to purchase bonds with the following characteristics:

- Calling themselves Ontario Heritage Bonds.
- Sponsored and guaranteed by the Government of Ontario.
- Proceeds to be used to fund the preservation of historic structures in Ontario.
- Paying 10 percent per year paid semi-annually.
- Subscriptions are tax-free if held to maturity.
- Minimum investment of $5,000; maximum of $40,000.

The OSC suggests that anyone approached to invest in this or a similar investment should contact the Commission or other provincial securities regulator.

For more on Investor Alerts, please go to the OSC Web site at *www.osc.gov.on.ca*

Staff Notice On Goodwill Charges

Purpose

The purpose of the Staff Notice on Goodwill charges is to set out Staff's views with respect to the application of paragraphs 1580.82-.83 of the CICA Handbook ("the Handbook") to charges for amortization of goodwill associated with long-term investments accounted for using the equity method.

Issue

Paragraphs 1580.82-.83 of the Handbook allow goodwill amortization expense and goodwill impairment charges to be presented on a net-of-tax basis as a separate line item in the income statement, following a subtotal that is descriptive of the items that follow. Basic and fully-diluted per share amounts may also be presented for this subtotal.

The question has arisen as to whether it is appropriate, in accordance with paragraphs 1580.82-.83, to present charges for amortization of goodwill associated with long-term investments accounted for using the equity method on a net-of-tax basis as part of an income statement line item for goodwill charges. Goodwill associated with long-term investments accounted for using the equity method includes both (i) goodwill that is recorded within the financial statements of the investee itself, and (ii) goodwill notionally included in the carrying value of the investment as recorded by the investor.

Paragraph 3050.12 of the Handbook specifies that the application of the equity method of accounting results in the net income of the investor being the same as the consolidated net income would have been had the financial statements of the investee been consolidated with those of the investor. Paragraph 3050.09 of the Handbook lists the items recorded by an investee that should be disclosed in the investor's financial statements according to their nature. This paragraph does not contemplate that charges for amortization of goodwill would be presented separately in the investor's income statement. In Staff's view, charges for amortization of goodwill associated with long-term investments accounted for using the equity method of accounting therefore fall outside the scope of paragraphs 1580.82-.83 of the Handbook.

Staff's Views

In Staff's view, the presentation described in paragraphs 1580.82-.83 of the Handbook is permissible for only those charges for amortization of goodwill associated with business combinations accounted for using the purchase method, as defined in CICA 1580.07. This presentation is not available in respect of charges for amortization of goodwill associated with long-term investments accounted for using the equity method of accounting.

For more information, please call **John Hughes**, Sr. Accountant, Chief Accountant's Office, (416) 593-3695.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

Concentration Restriction for Index Mutual Funds to be Changed

The remarkable performance of Nortel Networks Corp. as measured against The Toronto Stock Exchange 300 Index has prompted the CSA to propose amendments to the concentration investment restriction for index mutual funds in National Instrument 81-102. However, the concentration restriction will remain unchanged for actively managed mutual funds.

The concentration restriction in NI 81-102 prohibits a mutual fund from purchasing securities of any issuer if, as a result of such purchase, the mutual fund would have more than 10% of its net assets invested in securities of that issuer. Last year, when Nortel's weighting in the TSE 300 began to exceed 10%, the CSA granted relief from the concentration restriction for index mutual funds so that they could continue tracking the composition of their target indices. A new limit of 15% was imposed. As the value of Nortel shares continued to increase, by late 1999 its weighting in the TSE 300 exceeded 15%.

As a result, the CSA has decided to change the concentration restriction as it applies to index mutual funds. The intention is to permit such funds to continue pursuing their stated investment objective of tracking a specified index. It is expected that proposed changes to NI 81-102 will be published for comment in Spring 2000. The CSA will seek comment on whether index funds should be subject to any restrictions on investments in one issuer.

In the interim, the OSC is prepared to grant exemptive relief for index mutual funds to permit them to purchase securities of any one issuer so long as it does not result in more than 25% of the net assets of the mutual fund being invested in any one issuer. Such relief will be limited to those mutual funds adversely affected by the 15% limit.

Despite submissions from various industry participants, the CSA is not convinced that it is appropriate to amend the concentration restriction for actively managed mutual funds. The concentration restriction is intended to ensure that mutual funds are sufficiently diversified so as to minimize risk and ensure sufficient liquidity to meet redemption requests from investors.

For more information, please call **Paul Dempsey**, Legal Counsel, Investment Funds, (416) 593-8091.

Dual Reporting of Financial Information

A CSA Staff Notice has been issued which will provide guidance to issuers on Staff's expectations when a reporting issuer incorporated or organized in Canada (a "Canadian Reporting Issuer") distributes financial information prepared in accordance with accounting principles other than those generally accepted in Canada. Staff has noted an increase in the number of Canadian Reporting Issuers that are disclosing financial information prepared in accordance with U.S. GAAP in certain continuous disclosure and offering documents and has received requests for guidance.

The Notice says that a Canadian Reporting Issuer presenting foreign GAAP financial information in continuous disclosure and offering documents should clearly identify which set of GAAP is being used and, to the extent that more than one GAAP basis is used on a page, it will indicate, for each line item or section, which basis is being used. When Canadian and foreign GAAP financial statements are presented in the same document, each set of statements will be presented separately and the GAAP basis will be clearly identified. Any accompanying text will clearly state the GAAP basis of the financial information to which it relates and will be presented next to that financial information. To the extent that foreign GAAP information is presented, a reconciliation between the Canadian GAAP and foreign GAAP financial statements is encouraged, to explain the differences between the two sets of financial statements. When there is an auditor's report on the foreign GAAP financial statements, Staff expect the report to specify the set of GAAP which was used in preparing the financial statements and the GAAS which was followed by the auditor in auditing the financial statements.

For more information please call **Heidi Franken**, Manager, Continuous Disclosure Team, (416) 593-8249.

23 OSCB February 11, 2000 Page 905

Distribution Structures

On August 27, 1999, the CSA published the Distribution Structures Position Paper outlining the CSA position on a number of issues regarding the structures employed by registrants. These structures include referral arrangements, relationships between dealers and salespersons, and the use of trade names. The CSA have begun implementation of the Paper through communications, review of registrant compliance, and review of SRO rules. MFDA rules regarding distribution structures issues are expected to be published for comment in Spring 2000.

For more information, please call **Jennifer Elliott**, Legal Counsel, Market Regulation, (416) 593-8109.

Joint Forum Recommendations on Mutual/Seg Funds

Canadian securities and insurance regulators will move to harmonize securities and insurance regulations in order to protect and inform consumers of mutual funds and individual variable insurance contracts ("seg funds").

A working group of the Joint Forum of Financial Market Regulators has developed 15 recommendations for harmonizing securities and insurance regulations. Since consumer education is an important part of consumer protection, the working group has included a buyer's guide – containing objective and non-promotional information on both products – to help consumers make more informed purchasing decisions, and a mechanism to speed up complaint resolution between buyers and sellers.

The working group will consult with consumer and industry representatives as it moves to adapt the best practices in the various Canadian regulatory regimes for use in the others.

The recommendations have been posted on the websites of Canadian securities and insurance regulators.

For more information, please call **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129.

22 OSCB December 19, 1999 Page 8067

Disclosure of Outstanding Share Data

National Instrument (NI) 62-102, Disclosure of Outstanding Share Data, came into force on March 15, 2000. The purpose of NI 62-102 is to ensure that all reporting issuers provide reasonably current disclosure regarding their outstanding securities. The disclosures relate to the designation and number or principal amount, as of the latest practicable date, of (a) each class and series of voting or equity securities of the reporting issuer that are outstanding; (b) each class and series of securities of the reporting issuer that are outstanding and convertible into voting or equity securities; and (c) to the extent determinable, each class and series of voting or equity securities into which the securities in (b) are convertible.

The requirements of NI 62-102 could be satisfied by providing the disclosure in either annual and interim financial statements, or MD&A or other information accompanying those statements. The disclosure must be as of the nearest practicable date to the date of completion of the material in which it is presented. Further, the disclosures must be contained within information that is distributed to security-holders at the same time as the applicable annual or interim financial statements.

For more infomation, please call, **John Hughes**, Senior Accountant, Chief Accountant's Office, (416) 593-3695 or **Tanis MacLaren**, Special Advisor to the Chair, (416) 593-8259

Proposed Mutual Fund Amendments - Securities Lending and Repurchase Agreements

The Commission has published in a Special Supplement to the January 28, 2000 issue of the OSC Bulletin a notice of proposed amendments to National Instrument 81-102 Mutual Funds and National Instrument 81-101 Mutual Fund Prospectus Disclosure. The proposed amendments, once finalized, will permit mutual funds to participate in specified securities lending, repurchase and reverse repurchase transactions. The proposed amendments have gone out for a 90 day comment period.

For more information, please call **Darren McKall**, Legal Counsel, Market Regulation, (416) 593-8118.

23 OSCB January 28, 2000 (Special Supplement)

Canadian Venture Exchange

Effective November 26, 1999, the Alberta Stock Exchange and the Vancouver Stock Exchange merged to form the Canadian Venture Exchange (CDNX).

Certain of the existing regulations, rules, orders, policies, notices or other instruments ("Exchange Provisions") in the jurisdictions of various Canadian Securities Administrators may refer to the VSE or ASE or both. As circumstances permit, the relevant securities regulatory authorities will be reviewing proposed amendments to their respective Exchange Provisions to reflect the merger. Until further notice, references to the VSE or the ASE may be treated and interpreted as references to CDNX.

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

Michael Cowpland and M.C.J.C. Holdings Inc.
Date set for Motion in Cowpland matter

A judicial pre-trial conference was held on January 14, 2000 in the Ontario Court of Justice proceeding against Michael Cowpland and M.C.J.C. Holdings Inc. The defendants brought a motion to seek to change the venue of the trial from Toronto to Ottawa. The motion was heard on February 24, 2000. A decision on the matter has been reserved to March 23rd.

Mikael Prydz
Commission approves settlement agreement

The Commission approved a settlement agreement reached between Staff of the Commission and Mikael Prydz. The settlement relates to a Notice of Hearing and Statement of Allegations which were issued against Mr. Prydz on January 31, 2000. Staff alleged that Mr. Prydz sold securities to Ontario investors without being registered, sold securities which were not qualified by a prospectus and none of the prospectus exemptions was available for the distribution of the securities, acted as an adviser in the category of portfolio manager without being registered in this capacity, and failed to assess the suitability of investments for investors, guaranteed returns on investments and made misrepresentations to investors.

In the settlement agreement, Mr. Prydz agreed that his conduct as described above was contrary to the public interest. Mr. Prydz undertook that he would never apply for registration in any capacity, that he would send a letter to each of the investors to inform them of his sanction and identify the status of their investments, and that he would remove any reference on the Web site of his current employer to his involvement in the investment industry. The Commission issued a cease trading order for a period of five years and reprimanded him.

Phoenix Research and Trading Corporation
OSC places terms and conditions on Phoenix Research and Trading Corporation

The Ontario Securities Commission has imposed Terms and Conditions of Registration on Phoenix Research and Trading Corporation, as a precautionary move intended to protect Canadian investors. The terms and conditions were imposed in the wake of the announcement by the company that it experienced 'trading irregularities' in one of its hedge funds.

"Terms and Conditions of Registration are designed to allow companies to continue in business with enhanced supervisory requirements," said Michael Watson, Director of Enforcement. "This will give the Staff of the Commission the ability to work closely with Phoenix Research and Trading Corporation to safeguard the interests of investors who deal with the company."

The Terms and Conditions of Registration included requirements that Phoenix Research and Trading Corporation must:

- file with the OSC by February 21, 2000 a written report prepared by a forensic accounting firm acceptable to the Commission which provides a forensic review of all transactions in respect of the irregular trading activities in any funds managed or advised by Phoenix Research and Trading Corporation; and
- immediately retain a Monitor acceptable to the OSC to review the adequacy of their trade supervision and risk management policies and procedures.

The OSC has asked Phoenix Research and Trading Corporation to submit a follow-up report to the initial Forensic Accountant report filed on February 28.

The second report will provide further detail of any potential irregular trading activities identified in the initial report.

Anwar Heidary and James Sylvester
Settlement agreements entered into between Staff and Anwar Heidary and James Sylvester

The Commission has approved settlement agreements entered into between Staff and Anwar Heidary ("Heidary") and James Sylvester ("Sylvester"). The settlement agreements relate to a Notice of Hearing and Statement of Allegations which were issued against Heidary and Sylvester on September 7, 1999. In the proceeding, Staff alleged that Heidary and Sylvester sold securities to Ontario investors without being registered with the Commission. In addition, the securities which were sold were not qualified by a prospectus and none of the prospectus exemptions was available for the distribution of the securities.

The Commission approved an Order that Heidary is prohibited from trading in securities for a period of five years with some limited exceptions.

The Commission approved an Order that Sylvester is prohibited from trading in securities for a period of five years with some limited exceptions.

YBM Magnex International Inc.
OSC releases Decision on Motion for Disclosure

On January 25, 2000, the Ontario Securities Commission released its Decision on a Motion for Disclosure in connection with proceedings re: YBM Magnex International Inc.

The motions were heard on December 21 and 22, 1999. In addition to the motions for disclosure, a motion on behalf of Mr. Peterson for recusal of Mr. Jay Naster was heard on December 21 and 22, 1999. The decision and reasons on the motion for recusal dated January 5, 2000, contained a summary of the Statement of Allegations dated November 1, 1999. This decision and reasons only pertain to the motion for disclosure, not to any other matter.

Mr. Wilder did not participate in this hearing and has brought an application in the nature of prohibition and certiorari which is to be heard on February 15, 2000 in the Divisional Court. In response to this application, on December 17, 1999, Staff served and filed six affidavits and substantial documentation in the Divisional Court. These affidavits and documents deal exclusively with the second ground in the application, that is, "the alleged bias, partiality and unfairness arising out of the prospectus receipt process in 1997". Counsel for Staff, Mr. Code, submits that the affidavits and documentation reveal the state of the Staff's knowledge at the time and also explain in considerable detail the basis for the Director's decision in 1997 to receipt the prospectus.

On January 21, 2000, the Notice of Application in the Divisional Court was amended and the second ground of "alleged bias, partiality and unfairness arising out of the prospectus receipt process in 1997" was withdrawn.

The Applicants agreed that in order to defend themselves against the Commission's allegations, they require disclosure of all documents that indicate what information Commission Staff had when they decided to receipt the YBM prospectus.

Counsel for Staff argued that Staff will call as evidence the information that was in the possession of YBM officials and directors in March and April, 1997 and again in March and April, 1998. That information will be contrasted with what was disclosed publicly to investors. Whatever information or knowledge Staff possessed is not relevant to these issues, it was argued.

Decision

The Applicants have been provided with much more than the minimum disclosure required to enable them to meet the case. Nevertheless, the obligation to disclose is ongoing and, as the facts in issue in this case are developed, further production may or may not be required and can be dealt with by motion at a later date if necessary. No further order for disclosure is required at this time.

DJL Capital Corp. and Dennis John Little
Commission issues temporary cease trade order against DJL Capital Corp. and Dennis John Little

On January 11, 2000, the Ontario Securities Commission (the "Commission") issued a Temporary Cease Trade Order ("the Temporary Order") against DJL Capital Corp. ("DJL Capital") and Dennis John Little ("Little").

The Temporary Order states that during the period from September, 1997 to September, 1998, DJL Capital accepted subscriptions to units in DJL Capital from investors residing in Ontario and raised funds in the amount of (at least) Cdn. $800,000.00. It is alleged that DJL Capital and Little traded in securities without having filed a prospectus, failed to disclose to investors that funds accepted from investors were not used for the purposes set out in an Offering Memorandum, that investors have not received dividends contrary to the representations made by DJL Capital and Little, that DJL Capital and/or Little have not repaid funds or repurchased shares from investors, and that DJL Capital and/or Little made various representations which were misleading to investors and contrary to the public interest.

On January 21, 2000, the Ontario Securities Commission issued an Order continuing the Temporary Cease Trading Order made against DJL Capital Corp. on January 11, 2000, pending the conclusion of the hearing against DJL Capital and Little. The hearing in respect of DJL Capital and Little is adjourned, and further notification will be provided once dates are scheduled for the hearing. The respondents consented to the terms of the Order.

In addition to this proceeding, DJL Capital and Little are named as respondents in another matter before the Commission. On October 13, 1999, the Commission issued a Notice of Hearing and Statement of Allegations against DJL Capital, Little, Dual Capital Management Limited ("Dual Capital") and other respondents that DJL Capital was the promoter of the offering for the sale of units in Dual Capital Limited Partnership (the "Dual Capital Partnership"). During the material times, Little was the sole director and trading officer. It is alleged that DJL Capital and/or Little received payments from Dual Capital, the general partner, in the amount of approximately U.S. $161,525.00 when DJL Capital and/or Little knew that the sources of payments were funds received from investors and not income earned from any investment made by Dual Capital Partnership. This matter is presently adjourned.

Regal Capital Planners Ltd.
Commission approves settlement agreement

At a hearing on February 8, 2000, the Commission approved a settlement entered into between Staff and Regal Capital Planners Ltd. ("Regal") is a registered mutual fund and limited market dealer. The allegations made by Staff relate to Regal's supervision of Pierre Montpellier, a registered salesperson in Regal's Sudbury office. Montpellier is alleged to have sold over $4 million of investments in Foreign Capital Corporation, causing millions of dollars of losses to investors.

The Commission reprimanded Regal and ordered it to submit to a review of its practices and procedures, and to implement such changes as may be ordered. Regal will also make a payment of $100,000 to the Commission, and will make a contribution of $20,000 toward the Commission's costs of investigating the matter.

Regal has been purchased by BRM Capital Corporation. The settlement is conditional on the closing of the sale. An escrow of $5 million has been set aside from the proceeds of the sale to respond to any claims made against Regal.

David Singh and Paul Tindall
Commission sets hearing date

On February 8, 2000, the Commission set a hearing date in the proceeding against David Singh and Paul Tindall. The hearing will commence on July 31, 2000 and is scheduled for three weeks.

On October 14, 1999, the Commission issued a Notice of Hearing and Statement of Allegations against David Singh, the former president of Fortune Financial Corporation, and Paul Tindall, a former salesperson employed by Fortune.

RECENT SPEECHES

Remarks by David Brown, Q.C., OSC Chair,
Canadian Institute Superconference, February 9, 2000

Our regulatory institutions have to adjust to the quicksilver pace of innovation. We must learn to live in a borderless world, with changing demographics of investors and to the changing nature of investment.

In other words, regulators have to catch up with the pace of change. How do we do that? I believe that regulators must actively pursue change on four fronts.

First, we're going to have to look ahead, and anticipate trends instead of waiting for them to envelop us. It is no longer simply enough to react — we're going to have to become increasingly pro-active. If regulation is to remain relevant, we're going to have to develop a new concept of time.

The private sector began to recognize the commercial opportunities offered by the Internet immediately. Shouldn't the regulatory sector develop the same kind of antennae?

We have to look at financial products when they are in their embryonic stages, usually when they are still aimed at the institutional market. In that way, we can identify and address the regulatory needs they will prompt when they are released to the retail market. At the OSC, we're starting to take steps to anticipate developments in our markets. For example, we are participating in the development of international accounting standards that would make truly global offerings of securities simpler. We are also working with industry leaders to prepare for a move by major trading markets to T + 1; in other words, to shorten the period of time it takes to settle securities trades to next day settlement.

Second, we have to look at everything we're doing, and apply twin tests: Are we facilitating the creation of a viable financial market that will be attractive to foreign and Canadian investors? A market they will find secure, flexible and dynamic? And are we hampering the efforts of Canadian financial sector participants to be competitive with their global counterparts? In the legislation governing Canadian financial regulatory bodies, the competitive issues generally aren't dealt with directly. Much of this legislation was shaped before investors had access to 1-800 numbers, much less the Internet.

To reiterate: people are going to look for the cheapest trades and the best service, and they aren't going to let a border stop them. Canadian entities have to be able to compete. That means Canadian regulatory bodies are going to have to take competitive considerations into consideration.

And we are: competitive concerns are key elements in our work on regulating the new securities market — the market that isn't restricted to trades started by a call to your broker and completes on the floor of a traditional stock exchange. We've recently published proposed rules which will permit alternative electronic trading systems to operate in Canada. Alternative trading systems (ATSs) are direct competitors to the traditional stock exchange and this fact drives both the proposed regimes for ATSs and for a demutualized Toronto Stock Exchange. We are reassessing the application of our "know-your-client" and suitability rules to discount brokers and others who provide trade execution services but no advice.

Third, regulatory bodies are going to have to undergo a revolution in how we deal with all of our constituents. We're going to have to develop a mindset in which all market participants are customers.

The OSC has been taking a number of steps to make regulation a user-friendly activity — speedy, open, accessible, and understandable. We're shaping a mindset in which our constituents are seen as customers, and treated that way.

We're operating like a business with a three-year business plan. We've increased front-line staff, and streamlined operations. A year ago, more than 500 files were backlogged in our inquiries branch for a year to 15 months. We've eliminated the backlog, and set time targets for all inquiries. Every piece of correspondence is responded to within 48 hours. 95 percent of e-mails are answered the same day.

Businesses take customer focus for granted. Government bodies must make it a goal.

We're putting ourselves in the shoes of the people we deal with. The format of our annual report has been revised to make it more informative. We've launched a stakeholder survey to find out what our customers think of our service, and how it can be improved.

We're recognizing that regulators have customers — and we're treating them that way.

The fourth priority must be educational — a regulator must also be an educator. As more and more people invest, investor education is becoming a crucial aspect of investor protection. The OSC is pursuing a mandate to promote investor literacy. We're devoting more resources — time, money and staff — to this area. We're working with partners — not just the investment professionals, but also community organizations. We can no longer afford to leave investor education in the hands of the product vendors.

(New Integrated Disclosure System)

- The content, timing and standard of continuous disclosure reporting;
- The content and delivery of prospectuses;
- The form, content and timing of permissible marketing communications; and
- A shift of the regulatory review focus from prospectuses to continuous disclosure.

The IDS Disclosure Base

The cornerstone of the IDS disclosure base would be the IDS annual information form (IDS AIF), which would provide an annual consolidation of information about the issuer's business and affairs. It would be supplemented by a quarterly information form (QIF) as well as a supplementary information form (SIF) on significant events affecting the issuer. The CSA are also proposing a number of enhancements to continuous disclosure requirements so that they meet or exceed prospectus disclosure standards. The CSA are also considering extending the requirements to issuers that do not participate in the IDS.

Among the enhancements are:

- Reconciliation to Canadian GAAP and GAAS would be required for all annual financial statements;
- Reconciliation to Canadian GAAP would be required for all interim financial statements;
- Interim financial statements would be required to include a balance sheet and enhanced note disclosure;
- Audit committee review of all financial statements;
- The issuer's board of directors would be required to approve all financial statements;

Marketing communications would be permitted at any time.

- Annual financial statements would be filed within 90 days of year end;
- Interim financial statements would be filed within 45 days of period end;

Content and Delivery of Prospectuses

The IDS would place greater emphasis on the preliminary IDS prospectus to give potential investors access to comprehensive information before making an investment decision. Under the IDS, an agreement to purchase a security would not be enforceable unless the purchaser had first received a copy of the preliminary prospectus and any amendment. With the enhanced IDS disclosure base in place, a preliminary prospectus would only be required to contain disclosure relating to the offering, the offered securities and associated risk factors, and investors' statutory rights. Most issuer disclosure could be incorporated from the IDS disclosure base.

Under the IDS, the CSA are proposing a streamlined or checklist form of the financial prospectus that would incorporate by reference much of the information in the preliminary prospectus, but the CSA also are providing issuers with the option of delivering to investors the more traditional form of final prospectus.

Marketing Communications During a Distribution

Currently, securities regulation restricts marketing communications during a distribution of securities, so that investors are not misled by marketing or promotional efforts. Because the IDS would enhance continuous disclosure, many of the concerns about marketing should be alleviated. Under the IDS, restrictions are more clearly directed towards deterring the dissemination of misleading information. To ensure the integrity of marketing communications, however, the IDS would require that all written marketing materials issued during a distribution of securities would have to be identified and incorporated by reference in the prospectus.

Broad Access to a Streamlined Prospectus

At present, certain issuers are eligible to use a short form prospectus in order to speed the offering process. In contrast, almost all classes of issuers listed on major exchanges may qualify for the proposed IDS. However, the concept proposal is floating the suggestion that to be eligible for IDS, an issuer must be a reporting issuer in all jurisdictions in Canada. The CSA are seeking comment on this requirement, as well as whether a seasoning or quantitative requirement should be imposed.

Under the IDS, restrictions are more clearly directed towards deterring the dissemination of misleading information.

Under the IDS, prospectus reviews would be limited in scope, focusing on IDS ineligibility and grounds for receipt refusal. The timing of approvals would therefore be faster and more predictable. At the same time, there would be more frequent and extensive reviews of an issuer's disclosure base.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245, **Rose Fergusson**, Senior Accountant, Corporate Finance, (416) 593-8116, **Gary Tamura**, Legal Counsel, Corporate Finance, (416) 593-8119.

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The OSC web site, www.osc.gov.on.ca includes:
Information on the OSC; Investor Information;
Rules and Regulations; Enforcement Information
and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 3, Issue 2

SPRING 2000

inside...

FEATURE

OSC, FSCO To Merge

In order to create a more consistent and comprehensive financial regulatory system, the Ontario government plans to merge the Ontario Securities Commission (OSC) and the Financial Services Commission of Ontario (FSCO) into a single organization. The new entity will regulate the capital markets and the financial services industry. The initiative, the first of its kind in North America, will be led by OSC Chairman David Brown.

At present, the OSC oversees the Ontario capital markets and securities industry, while the FSCO regulates the insurance and pension sectors, deposit taking institutions, cooperatives and mortgage brokers. These areas increasingly overlap, with integrated banking, insurance and securities conglomerates offering a broad range of products and services. At the same time, technology and customer demand are spurring the development of new financial products that cross traditional boundaries. Some of these combine characteristics from several popular products, while others involve new and sophisticated trading techniques or strategies.

(continued on page 14)

INDEX

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Proposed Rules to Improve Financial Disclosure

The Ontario Securities Commission has published for comment two proposed Rules and Companion Policies designed to improve disclosure of financial information by public companies. The proposals will significantly increase the extent and quality of information provided in quarterly reports.

Investors will gain an understanding of past corporate performance and future prospects on a more timely basis.

Proposed Rule 52-501 Financial Statements, introduces a new requirement for all public companies to include in interim financial statements an income statement and a cash flow statement for the current quarter in addition to the currently required year to date information. Companies will also be required for the first time to provide an interim balance sheet and explanatory notes to the interim financial statements. Under the proposed rule, a company's board of directors and its audit committee will be required to review the interim financial statements before they are filed with the Commission and distributed to shareholders. The proposed Companion Policy urges Boards, in discharging their responsibilities for ensuring the reliability of interim financial statements, to consider retaining external auditors to review the statements.

Proposed Rule 51-501 reformulates existing OSC Policy 5.10 and introduces a new requirement for management to provide a narrative discussion and analysis (MD&A) of interim financial results with the interim financial statements. This will facilitate investors gaining an understanding of past corporate performance and future prospects on a more timely basis. The proposed Rule will replace OSC Policy 5.10 and give the Commission greater ability to enforce compliance with annual and interim MD&A content requirements.

While companies are not required to comply with these new requirements until the proposed Rules come into force, companies are encouraged as a matter of relevant financial disclosure to adopt the proposals as soon as practicable.

The proposed Rules and Companion Policies can be consulted online at *www.osc.gov.on.ca*.

For more information, please call **Heidi Franken**, Manager, Continuous Disclosure, (416) 593-8249, **Lisa Enright**, Senior Accountant, Continuous Disclosure, (416) 593-3686, or **James McVicar**, Legal Counsel, Corporate Finance, (416) 593-8154.

(2000) 23 OSCB Page 1783

Standards of Disclosure for Mineral Projects

The OSC requested comment on proposed National Instrument 43-101, which consolidates and expands on the current disclosure and reporting requirements for mineral projects. The proposed National Instrument is consistent with the recommendations of the Final Report of the TSE-OSC Mining Standards Task Force.

The proposed National Instrument originated with reformulation of National Policy Statements No. 2-A and 22. The new National Instrument sets standards for all oral statements and written disclosure made by an issuer concerning mineral projects, which are likely to be made available to the public. All disclosure concerning mineral projects, including oral statements and written disclosure in news releases, prospectuses and annual reports, is to be based on information prepared by or under the supervision of a qualified person. Disclosure of mineral resources and mineral reserves is to be made in accordance with standard definitions set out in the proposed National Instrument.

All disclosure concerning mineral projects is to be based on information prepared by or under the supervision of a qualified person.

In certain circumstances, the disclosure must be supported by a written technical report prepared and certified by a qualified person in accordance with Form 43-101F and filed by the issuer with the securities regulatory authorities. In specified circumstances, the technical report must be prepared and certified by a qualified person who is independent of the issuer.

It is expected that the proposed Instrument will come into effect on or before December 31, 2000.

For more information, please call **Kathy Soden**, Director, Corporate Finance, (416) 593-8149, or **Deborah McCombe**, Chief Mining Consultant.

(2000) 23 OSCB March 24, Page 2159

SRO Membership for Securities Dealers and Brokers

The Commission has requested comment on proposed Rule 31-507 requiring all securities dealers and brokers to be members of a self-regulatory organization (SRO) recognized by the Commission under section 21.1 of the Act. The proposed Rule is substantially similar in effect on all securities dealers and brokers as National Policy Statement No. 49 was on "national dealers."

At the present time, the Investment Dealers Association of Canada (IDA) is the only SRO recognized by the Commission for member regulation purposes. Membership in the IDA would require all member dealers to make contributions to CIPF. The Commission is expected to consider recognition of the Mutual Fund Dealers Association (MFDA), an SRO for mutual fund dealers, in late 2000 or early 2001.

The Rule is expected to become effective on December 1, 2000. Applicants for registration as a securities dealer or broker after this date will be required to be SRO members three months after this period (March 1, 2002). An existing securities dealer or broker registrant must become a SRO member as of the date of their first renewal of their registration three months after the effective date. An existing securities dealer or brokers registrant must also provide the SRO with notice of its intention to make an application for membership by January 1, 2001.

The OSC advises that registrants begin to plan for the transition under this Rule immediately.

A securities dealer or broker that does not wish to become a member of the IDA as of the applicable date must either surrender its registration or re-register in another category. Those securities dealers, for example, who would prefer to become mutual fund dealers and therefore be subject to Rule 31-506 rather than this Rule, must re-register as mutual fund dealers before their first renewal of registration after March 1, 2001.

The OSC advises that registrants begin to plan for the transition under this Rule immediately. Registrants should be aware that the processing of membership applications at the IDA requires adequate review and may take some time. The Director has the authority to grant exemptions from the Rule and may also consider applications for temporary exemption in certain circumstances.

Changes from previously published Rule

The Rule was originally published for comment on October 3, 1997, and subsequently revised and republished for comment on June 19, 1998. The main change since the 1998 Rule is that the current rule uses the renewal of registration as the trigger date for SRO membership for existing registrants. The Rule has also been changed to add a requirement that securities dealers and brokers intending to become SRO members provide notice of this to the SRO shortly after the Rule becomes effective. As noted above, this date is expected to be January 1, 2001.

For more information, please call **Jennifer Elliott**, Legal Counsel, Market Regulation, (416)593-8109, or **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257.

(2000) 23 OSCB April 14, Page 2755

Prospectus Disclosure in Certain Information Circulars

The OSC has requested comment on proposed Rule 54-501, which would require prospectus disclosure in information circulars for certain transactions.

The proposed Rule requires information circulars sent to holders of voting securities of a reporting issuer in respect of a meeting of security holders for which proxies are being solicited and which is being held to consider certain transactions under which securities are to be issued to contain prospectus disclosure. This includes the financial statement and other disclosure that is required to be included in a prospectus if the transaction results in the acquisition of a business.

For more information, please call **Cynthia Rogers**, Senior Legal Counsel, Corporate Finance, (416) 593-8261.

(2000) 23 OSCB March 17 page1979

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

OSC Publishes Statement of Priorities

The Commission has published its draft annual statement of priorities for the fiscal year ending March 31, 2001. The key priorities include the following:

- **Redefine approaches to the financial regulatory framework.** This involves issues such as: redefining the mandates and activities of all Canadian regulators of financial service providers and harmonizing regulation across Canada; completing reformulation of major OSC rules and policies; participating in the Five Year Legislative Review process; reviewing regulatory models governing the provision of financial advice; streamlining registration processes including the development of a National Registration Database; and recognition/exemption processes for restructured Canadian exchanges.
- **Strengthen the Compliance – Enforcement Continuum.** The Commission will increase its effectiveness through the following compliance monitoring and enforcement activities: strengthening protocols for SRO oversight; performing more compliance examinations and inspections; completing the development of the Market Integrity Computer Analysis (MICA) system; completing examinations of the TSE and IDA; working with policing authorities to establish a Securities Fraud Task Force.
- **Strengthen Secondary Market Regulation and Enhance the Quality of Continuous Disclosure by Reporting**

Issuers. Key initiatives will include: comprehensive programs for review of continuous disclosure documents; finalizing an Alternative Trading Systems (ATS) rule and implementing the data consolidator; emphasizing the review of financial statements; finalize drafting of legislation related to statutory civil liability for continuous disclosure and implementing a national electronic insider trade reporting system.

- **Enhance Investor Protection Through Education**. This will include establishing an investor learning and education foundation.
- **Implement Fee Reduction Strategy**. The Commission will implement a more streamlined fee structure which aligns revenues more closely to costs.
- **Foster Development of an Improved Mutual Fund Governance Framework**.
- **Strengthening the Role of the OSC as a Key Member of the International Securities Regulatory Community**.
- **Continue to Develop and Implement Accountability Mechanisms**, including completing a survey of key constituents to obtain feedback on the OSC's performance and identifying opportunities for improvement.
- **Foster the Continued Development of the OSC as an "Employer of Choice."**

For more information, please call **Robert Day**, Manager, Business Planning, (416) 593-8179.

(2000) 23 OSCB March 31 Page 2363

Five Year Review of Securities Legislation

The Securities Review Advisory Committee, appointed by the Ontario Minister of Finance to review the OSC's legislation, regulation and rules, is seeking input from market participants and any interested persons. To encourage comment, the Committee published an Issues List in the April 28, 2000 edition of the OSC Bulletin, which also can be accessed at the OSC's web site *www.osc.gov.on.ca*.

The key topics covered by the Issues List include:

- Principles underlying securities legislation, including fundamental principles and the closed system;
- Focus and scope of legislation. This area includes topics such as regulation of registrants, self-regulatory organizations and other market intermediaries, tiered holding system, continuous disclosure obligations, mutual funds, shareholder communications and take-over bids, and enforcement;
- Impact of regulatory harmonization and globalization trends;
- Impact of technology; and
- Mandate and role of the Commission.

The Committee will prepare a draft report outlining the results of its consultation process and its recommendations. The Committee may address other matters raised by commenters in addition to the topics on the Issues List.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245.

(2000) 23 OSCB April 28 Page 3034

OSC Names Chief Mining Consultant

The Ontario Securities Commission has hired **Deborah McCombe**, B.Sc. P. Geo. to the newly created position of Chief Mining Consultant, in the Corporate Finance Branch, effective May 23, 2000.

Ms. McCombe will work along with other OSC and CSA staff on the reformulation of National Policies 2A and 22 into National Instrument 43-101, Standards of Disclosure for Mineral Projects. The proposed instrument implements the disclosure related recommendations of the TSE/OSC Mining Standards Task Force.

Ms. McCombe will also work with the Continuous Disclosure Team in the Corporate Finance branch to examine the technical information associated with natural resource issuers' continuous disclosure filings.

OSC Proposes Reduction in Fees

The Ontario Government Budget 2000, released May 2, announced a proposed further 10 percent across-the-board reduction in the fees charged by the OSC. This fee reduction will take effect on June 26, 2000. The OSC is continuing the comprehensive review of its fee structure with a view to realigning its revenue with regulatory expenses. The new fee schedule is expected to be in place by July 2001.

Re-regulation of Advice Project

The OSC has initiated a Re-regulation of Advice Project that takes a fresh look at the current regulatory model governing "advice" – the products and services delivered to customers – in view of the retail securities industry's shift in focus from stock trading to financial advice and asset management.

"As regulators, we are concerned that the reliance invited by the securities industry when it holds itself out as primarily an advice provider be matched by a appropriate level of accountability and responsibility," says Julia Dublin, Project Manager. The project will review the current regulatory model and its ability to protect consumers and ensure their confidence, especially given industry and technological change. Some of the questions it will address are: Does our trading-based and disclosure-based model of securities regulation ensure that the new market for advisory services will be one in which the average investor can participate as an informed and confident consumer? Do our assumptions about investor behaviour and access to information still hold up where most investors are using their PCs at least in some

form for their finances? How easily does a sales driven business culture adapt to offering disinterested advice?

To assist in the project, the Commission has assembled an advisory committee of individuals drawn from a cross-section of the financial services industry.

The Members of the Committee are:

Philip Armstrong - Managing Director, Altamira Investment Services Inc.

Paul K.Bates - President & C.E.O., Charles Schwab Canada

Paul Bourbonniere - Polson Bourbonniere Financial

Christine Butchart - Registered Financial Planner, C.M. Oliver Financial Corporation

Warren V.Collier - Counsel, Barclays Global Investors Canada Ltd.

Anthony R.Davidson - Investment Dispute Representation

Philip Gallo - Vice President and Associate General Counsel, Goldman Sachs & Co.

Ann Marshall - President, James P. Marshall Inc.

Colman O'Brien - President, BayStreet Direct.com Inc.

Colleen Parrish - Plan Manager, OPSEU Pension Trust

Brian Peters - Vice President and Director, RBC Dominion Securities

Rene R.Sorell - McCarthy Tétrault

Michael J.Trebilcock - Faculty of Law, University of Toronto

F. Michael Walsh

At present the group is embarked on the assessment phase of the project, including:

- Identifying sources and quality of financial advice and information available to consumers;
- Gathering data regarding market failure for retail level advice, and distortions due to conflicts of interest;
- Identifying industry marketing trends and the impact of technology driven phenomena – low cost of stock trades, mass availability of information, potential for direct access to trading systems – on democratization of traditional securities markets, convergence of providers structurally and geographically;
- Assessing the relationship between the nature and quality of advice and commercial goals of salespersons, advisers, and their employers, and the effect of institutional and individual conflicts of interest;
- Assessing any perceptual mismatch between investors' and regulators' expectations of the industry and the regulatory regime;
- Identifying and analyzing current legal and ethical rules governing advice and client- salesperson/advisor relationship; and
- Identifying and assessing present investor protection objectives and regulatory concerns and identify any weaknesses in current model, determine appropriate role for regulators.

The project hopes to have an issues paper for the Five Year Review Committee this fall. For more information, please call **Julia Dublin**, Legal Counsel, General Counsel's Office (416) 593-8103.

OSC Takes Part in International Internet Surf Day

The Ontario Securities Commission, in conjunction with other members of the International Organization of Securities Commissions (IOSCO), took part in an International Internet Surf Day on March 28, 2000. This event aimed at increasing investor protection and confidence in the integrity of capital markets.

The OSC was one of twenty-one securities regulators from eighteen countries around the world who co-ordinated their efforts to identify securities and futures fraud and abuse on the Internet. Regulators concentrated on fraudulent solicitation of investors, manipulation, the circulation of false or misleading information and insider trading.

During the surf day, over 220 staff members from the 21 participating authorities visited over 10,000 sites totalling nearly 1,000 hours of global participation. Of these sites, approximately 1,000 were identified for follow-up review, 400 sites involving cross border activity. The review is now underway and could result in enforcement action.

The OSC's enforcement branch indicated that 5 staff members surveyed a total of 257 web sites. From this, they identified a number of web sites dealing primarily with possible unauthorized offerings of securities, several in connection with offshore banking and investment services. The majority of offerings appeared to overstate the potential earnings while giving little or no mention of risk or suitability.

For more information please contact, **Colin McCann**, Investigator, Enforcement Branch, (416) 593-8285

Investor Education Week

Securities administrators and industry organizations across Canada marked the 3rd Annual Investor Education Week Campaign from April 10-14th. The campaign theme was "Markets in the 21st Century".

The campaign's initiatives included the following :

- The CSA sponsored a three week campaign promoting awareness among young people about investments and savings on MuchMusic/MusiquePlus. Viewers were encouraged to learn more by visiting *www.muchmusic.com* and linking with *www.osc.gov.on.ca*
- The April issue of Fifty-plus Magazine (CARPNews) carried a feature, "Technology and the Capital Markets". The advertorial will be serialized on *www.fiftyplus.net*
- The April 10th edition of Macleans Magazine featured a supplement sponsored by the members of the Investment Funds Institute of Canada. An article on Investor Education Week was the lead.

- Public Seminars addressed topical issues such as market access in the 21st century; suitability; and investment scams and frauds;
- The OSC's virtual town hall meeting will be broadcast on cable television, reaching a potential 1.5 million households;
- The Investment Funds Institute of Canada hosted an event with David Brown, OSC Chair as Keynote Speaker on April 10th.; and
- The Toronto Stock Exchange held its second annual Investor Forum at Stock Market Place. Exhibits were sponsored by the Canadian Bankers Association, The Institute of Canadian Bankers, Investment Dealers Association, The Investment Funds Institute of Canada, The Investor Learning Centre and the OSC.

For more information, please call **Nancy Stow**, Manager, Investor Education, (416) 593-8297.

OSC To Create Investor Education Foundation

The OSC is creating the Investor Education Foundation funded by monies collected in OSC enforcement settlements. The Foundation, expected to be in place later this year, will support initiatives designed to deepen the knowledge and sophistication of Ontario's investing public.

The Foundation will work to raise the level of investment awareness through educational products and support, industry and community partnerships, and research. It will be managed by a Board composed of representatives from the OSC, the financial sector, and educational experts.

For more information, please call **Nancy Stow**, Manager, Investor Education, (416) 593-8297.

(2000) 23 OSCB April 14 Page 2682

OSC Provides Relief from Suitability Requirements

In order to meet the needs of investors who use "discount" or "electronic" trading, the Canadian Securities Administrators will grant relief from suitability obligations on an application basis to dealers who only provide trade execution services for their clients.

In order to protect investors, the CSA will impose several conditions on these dealers. These include:

- The dealer must operate as a legal entity or business unit that limits activities so that it does not provide advice or recommendations on the purchase or sale of securities;
- The dealer must not compensate individuals on the basis of transactional values; and
- The dealer must receive from the client a written informed acknowledgment that no advice or recommendation will be given and that no determination of suitability will be made.

For more information, please call **Randee Pavalow**, (416) 593-8257.

(2000) 23 OSCB April 14 Page 2683

OSC Finalizes Conditions for TSE's Demutualization

The OSC has signed the Recognition Order establishing the terms and conditions for the operation of The Toronto Stock Exchange Inc. (TSE Inc.).

As part of its demutualization process, on April 3, 2000, TSE Inc. became a for-profit corporation under the Business Corporations Act, having received all regulatory and governmental consents. The OSC's Recognition Order, developed in consultation with TSE Inc., sets out the terms and conditions for TSE Inc. and was published on April 7th.

The Recognition Order includes annual independent reviews of the TSE's computer systems operations.

The Recognition Order includes annual independent reviews of the TSE's computer systems operations. The TSE is commencing the first annual review immediately and it will be completed in late spring. The review will ensure TSE Inc. has in place and is following appropriate documented processes for the operation of its key trading related systems.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257.

(2000) 23 OSCB April 7 Page 2491

Defaults in Complying with Financial Statement Filing

The OSC has published for comment OSC Policy 57-603, Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements. The proposed Policy outlines the Commission's revised approach to issuers who are in default of the requirements of the Act to file annual and interim financial statements.

The fundamental change in practice encompassed by the Policy is that in circumstances where a Defaulting Reporting Issuer provides alternate information to the marketplace as described in the Policy, the Commission will, for a period not exceeding two months, generally not impose a cease trade order on all trading in the issuer's securities (referred to as an Issuer Cease Trade Order in the Policy). Instead, a cease

trade order will be imposed on trading in the issuer's securities by its officers, directors, and insiders (referred to as a Management and Insider Cease Trade order in the Policy). The Policy provides that the two month period may be extended in certain circumstances where a Defaulting Reporting Issuer is the subject of insolvency proceedings.

The Commission's views as to the content and filing of certain documents and disclosure which should generally be filed by any issuer subject to a Management and Insider Cease Trade Order are set out in the Policy.

Where a Defaulting Reporting Issuer provides alternate information to the marketplace as described in the Policy, the Commission will impose a cease trade order on trading in the issuer's securities by its officers, directors, and insiders.

Sections 3.1 and 3.5 deal with an announcement of a default and an announcement that the default has been corrected. A default announcement is issued at the time the issuer goes into default, and a default correction announcement is issued at such time as the issuer remedies the default. Furthermore, default status reports which are dealt with in section 3.2, communicate ongoing developments in the affairs of the Defaulting Reporting Issuer. These reports would generally be issued at least every two weeks during the period of default. In order to facilitate the issuance of a Management and Insider Cease Trade Order, section 3.1 deals with keeping the Commission informed regarding the reporting issuer's officers and directors and those persons who served as such during the period covered by the financial statements which are the subject of the default, as well as those insiders who are known to the issuer. The Commission's view that an insolvent issuer should provide the Commission and the market with information it is required to provide to its creditors under the applicable insolvency legislation is set out in section 3.3. Finally, section 3.4 deals with any unaudited financial information which may be issued by a Defaulting Reporting Issuer during the period of default.

The Policy notes that the Commission will post on its web site, and periodically publish in the Bulletin a list of Defaulting Reporting Issuers prefaced by an investor alert related to the implications of a reporting issuer being in default.

The Canadian Securities Administrators are developing a similar National Policy. If and when adopted, the National Policy would replace the Policy.

For more information, please call **Heidi Franken**, Manager, Continuous Disclosure, (416) 593-8249.

(2000) 23 OSCB March 31 Page 2368

Supreme Court Decision Prompts Amendments

A number of amendments to the *Securities Act*, the Regulation under the *Securities Act*, and the Regulation under the Commodity Futures Act came into effect on March 1, 2000. These amendments stemmed from the Supreme Court of Canada decision in M. v. H. in 1999.

On May 20, 1999, the Supreme Court of Canada decided in M. v. H. that the exclusion of same-sex partners violates the Canadian Charter of Rights and Freedoms. The Court noted that its decision "may well affect numerous other statutes." Amendments to the *Securities Act* received royal assent on October 28, 1999 as part of Bill 5, *Amendments Because of the Supreme Court of Canada Decision in M. v. H. Act, 1999.*

The amendments to the Securities Act are to the definition of "associate."

Bill 5 amended the Family Law Act so that its provisions governing support obligations apply in the same way to same-sex partners as they do the opposite-sex partners. It also amended many other statutes. The amendments to the *Securities Act* are to the definition of "associate" and to the seed capital exemption from the Act's registration and prospectus exemptions.

The definition of "associate" contained in the Regulation under the Commodity Futures Act was amended to have same definition of "associate" in the *Securities Act*, which also applies to the use of that term where used in the Regulation under the *Securities Act*. In addition, Item 5(a) of the Uniform Application for Registration/Approval, Form 4 under the *Securities Act* and Form 7 under the Commodity Futures Act, was amended to require disclosure of the name and the nature of employment of any individual with whom an applicant for registration lives in a conjugal relationship.

For the time being, the Registration section of the OSC will continue to use and accept printed Form 4's and Form 7's that do not reflect this revision. Applicants for registration are nonetheless required to disclose the name and nature of employment of individuals with whom they live in a conjugal relationship in completing those forms.

For more information, please call **Ralph Lindzon**, Senior Legal Counsel, Office of the General Counsel, (416) 593-8207.

22 OSCB December 24, 1999 Page 8283

Registrant Regulatory Filings

Staff of the Ontario Securities Commission remind registrants of the regulatory filing requirements imposed on them pursuant to both the *Securities Act* and the Regulation made under the Act. For example, pursuant to section 21.10 of the Act and section 139 of the regulation, most non-SRO members must file annual audited financial statements and other regulatory filings prescribed by the regulations within ninety days after the end of their financial year. Most registrants must also maintain certain minimum capital and other regulatory requirements, as prescribed by sections 107 to 112 of the Regulation.

Staff stress the importance of non-SRO registrants meeting their regulatory filing requirements on a timely and complete basis. Staff are treating regulatory filing deficiencies as a significant issue to be addressed as part of the Commission's objective to strengthen the Compliance-Enforcement continuum.

Consequences of deficient regulatory filings could include the imposition of terms and conditions on a non-SRO registrant or the suspension of registration.

For further information, please contact: **Christina Forster**, Senior Accountant, Compliance, (416) 593-8061, **Elle Koor,** Senior Accountant, Compliance, (416) 593-8077, **Felicia Tedesco,** Senior Accountant, Compliance, (416) 593-8273, **Barbara Fydell,** Legal Counsel, Market Regulation, (416) 593-8253.

Public Filings and Takeover Notices in OSCB

As of Volume 23, Issue 18, the OSC Bulletin will no longer include chapters for Public Filings and Takeover Notices, (Chapters 10 and 14) respectively. This step was taken in order to control the size of the OSC Bulletin. Most of the documents listed in Chapter 10 may be obtained on the SEDAR site, www.sedar.com. Historical document filings, including certain documents filed only in hardcopy to the OSC are obtainable at Micromedia's Document Delivery Centre at (416) 362-5211 ext. 2599 or 1 (800) 387-2689 ext. 2599. For those subscribers who wish to continue receiving Public Filings in the OSC format, Chapter 10 will still be made available on Micromedia's OSC Web (via internet) and OSC Bulletin Plus (CD-Rom). Both of these products are published by Micromedia, a division of IHS Canada under authority of the Ontario Securities Commission.

For more information, please call **Barb Waddell**, Micromedia, 416) 362-5211 ext 2577.

Proficiency Requirements

On May 9, 2000 the Commission approved amendments to IDA Policy 6, Part I Proficiency Requirements. The amendments shorten the training period for Investment Representatives from 90 to 30 days. Investment Representatives are registered salespersons that do not provide advice to clients. The Commission approved implementation of the amendments on an emergency basis. A copy and description of the amendment and the Commission's approval of implementation was published on April 7, 2000.
No comments were received.

Dialogue with the OSC

The Ontario Securities Commission will host **Dialogue with the OSC 2000** on October 31st at the Toronto Sheraton Centre. This annual industry-wide event focuses on the OSC Statement of Priorities as well as major Commission initiatives. The topics will include Redefining Approaches to the Financial Regulatory Framework, Enforcement Issues, Mutual Fund Governance and Accounting Issues.

This year for the first time, a modified version of the Toronto program is being offered in locations across Ontario, including London, Ottawa and Sudbury. Each of the locations will provide an interactive satellite link to Toronto as well as the other sites. Delegates will be able to take advantage of the core program and ask questions of the panelists in Toronto.

A member of the staff of the Commission will also be at each location to conduct an in-person presentation.

The program includes lunch. For more information, contact **Ellis Riley** at (416) 593-7352.

Congratulations

Commissioner Kerry Adams has been elected a Fellow of the Institute of Chartered Accountants of Ontario (F.C.A.). Election to Fellowship, the highest designation that the ICAO confers, recognizing outstanding career achievements and leadership contributions to the community and the profession.

Kelly Yeo has earned the Award of Excellence for outstanding academic achievement in the CSA Course. Her grade placed her in the top one percent among students in Canada, the U.S., England, India and other countries who completed the course in 1999.

Darren McKall has been awarded the Bronze Award from the Canadian Securities Institute in the Conduct and Practices Handbook Course (CPH) for the third highest final grade in the 1999 calendar year.

ACCOUNTING ISSUES

Recent accounting issues relevant to the securities industry.

SEC and Canadian GAAP

In late 1999, staff of the Securities and Exchange Commission in the United States issued two new Staff Accounting Bulletins (SABs), providing guidance on the appropriate application of US GAAP. SAB No. 100 addresses the accounting for and disclosure of certain expenses and liabilities commonly reported in connection with restructuring activities and business combinations, as well as the recognition and disclosure of asset impairment charges. SAB No. 101 addresses the recognition, presentation and disclosure of revenue.

The issues the SABs address also arise frequently in applying Canadian GAAP. Consequently, two questions have been raised with staff in the Office of the Chief Accountant:

Will compliance with the SABs ensure compliance with Canadian GAAP?

Are interpretations other than those provided in the SABs appropriate under Canadian GAAP?

This article briefly discusses these questions.

SAB No. 100

SAB No. 100's guidance on restructuring charges is based predominantly on the criteria contained in FASB Emerging Issues Task Force Issue No. 94-3. These criteria are substantially the same as those contained in Emerging Issues Committee Abstract No. 60, Liability Recognition for Costs to Exit an Activity (Including Certain Costs Incurred in a Restructuring). Accordingly, applying those aspects of the guidance in the SAB that can be related directly to the criteria in EIC No. 60 will generally result in compliance with Canadian GAAP. Indeed, in most cases, when the criteria in EIC No. 60 are applied with due regard to the underlying fundamental accounting principles, it would be difficult to contemplate a reasonable interpretation other than that set forth in SAB No. 100.

In some respects, however, SAB No. 100 introduces new criteria or rules that would not necessarily represent the only reasonable application of EIC-60. For example, the rebuttable presumption that an exit plan should be concluded within one year from the commitment date, while a reasonable application of the principles, is not a constraint that must be met under Canadian GAAP. The specific financial statement disclosures set out in SAB No. 100, while not identified individually in Canadian authoritative literature, may provide useful clarification or further explanation of items in the financial statements and contribute to fair presentation of financial position, results of operations or cash flows. Similarly, inclusion in MD&A of information akin to that described in SAB No. 100 would contribute to providing an understanding of the issuer's performance. Issuers and their auditors are encouraged to consider these aspects of SAB 100 in assessing how to apply EIC No. 60 and the nature and extent of disclosure that is appropriate.

SAB No. 100's guidance on impairment is based for the most part on FAS 121, Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to Be Disposed Of. There is no direct Canadian counterpart to this standard, although CICA 3060, Capital Assets, contains some guidance on write-downs of capital assets. Some of section SAB No. 100 deals with the appropriate application of FAS 121. In other respects, however, it discusses matters that are clearly relevant to Canadian circumstances and it provides a useful perspective for Canadian GAAP purposes. For example, the guidance related to methods for assessing impairment of enterprise-level goodwill and for estimating future cash flows can be applied in addressing similar issues within the framework of Canadian GAAP.

SAB No. 100's discussion relating to liabilities assumed in a purchase business combination is founded on fundamental accounting concepts that are as applicable under Canadian as under US GAAP.

SAB No. 101

US GAAP contains numerous authoritative pronouncements on specific aspects of revenue recognition that have no direct counterpart in Canada. These pronouncements in many areas, extend the broad principles set out in CICA 3400, Revenue. Canadian accounting practices on specific aspects of revenue recognition have evolved to some degree on an industry-specific basis.

Nevertheless, the fundamental accounting concepts pertaining to revenue recognition are similar under both US and Canadian GAAP. Accordingly, Canadian issuers and their auditors should consider carefully the basis in Canadian authoritative literature for all revenue recognition policies that differ from the interpretations set out in SAB No. 101. Where a policy adopted under Canadian GAAP differs from the requirements of SAB No. 101, and the difference cannot be justified with specific reference to underlying authoritative literature, or to clearly established practice that is consistent with fundamental accounting concepts, staff will be likely to take the view that the policy is not in accordance with Canadian GAAP.

For example, SAB No. 101 addresses certain circumstances in which a company seeks to recognize revenue even though all significant acts have not been completed under the sale transaction. In such cases, revenue recognition would normally be inappropriate under Canadian GAAP.

Canadian issuers that reconcile their financial statements to US GAAP should expect that staff will likely question reconciling items arising from revenue recognition policies.

Staff also notes that the Emerging Issues Committee is currently considering whether to add certain issues arising from SAB No. 101 to its current agenda.

For more information call **John Hughes**, Senior Accountant, Office of the Chief Accountant, at 416-593-3695.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

Volunteers Wanted for Financial Planning Proficiency Pilot Test

Four hundred volunteers will write the pilot test for the new Financial Planning Proficiency Examination on October 2nd., 2000.

The pilot test will help regulators "test" the questions for the new examination for individuals offering financial planning advice. The exam will be the cornerstone of the proposed new proficiency standards. Volunteers for the one-day pilot test will receive complimentary lunch, feedback indicating areas of possible weakness, and, subject to approval by the relevant industry organization, continuing education credit. Particularly desired for writing the pilot test are individuals who have recently completed or are near completion of a financial planning course. Many people currently working in the financial services industry will not have to pass the exam, as the proposed standards will include a grandfathering clause for individuals who have completed various programs that test financial planning expertise.

To volunteer for the pilot test or for more information on it, please call **Shelly Starr**, Pilot Test Co-ordinator, (416) 593-8209

System for Electronic Data on Insiders (SEDI)

The Canadian Securities Administrators ("CSA") are currently developing a system to mandate the use of a System for Electronic Data on Insiders (SEDI) which will be implemented by a rule to be adopted as a national instrument by all members of the CSA. The projected launch date for the system is anticipated to be early December 2000. The proposed rule will set out the main requirements and procedures relating to electronic filing of insider trade reports. It will require insiders of all Canadian reporting issuers, and all foreign issuers who have opted in to SEDAR, to file their insider reports using the system. The requirement for insiders to file using SEDI is necessary in order to ensure the viability of SEDI, to promote the efficient handling of insider report filings by the CSA and to ensure that SEDI provides a comprehensive base of information available for access by the CSA, insiders, the general public and other stakeholders.

SEDI will benefit insiders and the market by:

- Permitting an insider to securely file insider trading reports in electronic format over the Internet using commonly available web browsers;
- Permitting an insider to satisfy the legislative requirements of all CSA jurisdictions by filing its report once on the system; and
- Improving public access to insider reports by making such reports available on a web site shortly after they are filed.

The proposed national instrument was published in June 2000 for a 90 day initial comment period.

For more information, please call **Cynthia Rogers**, Senior Legal Counsel, Corporate Finance, (416) 593-8261 or **Ritu Kalra**, Accountant, Corporate Finance, (416) 593-8063.

Uniform Terms of Escrow for IPOs

The Canadian Securities Administrators have developed a revised proposal for uniform terms of escrow that would apply to initial public distributions of securities by prospectus (IPOs). CSA Notice 46-301, published in the March 17 OSC Bulletin, summarizes key elements of the Proposal and highlights changes from an earlier proposal published for comment in 1998.

The CSA will develop and publish for comment a national instrument based on the Proposal. Until a national instrument is implemented as a rule or policy in a local jurisdiction, the current escrow policies in the jurisdiction will remain operative. However, securities regulatory staff will be guided by the Proposal in connection with IPOs for which a preliminary prospectus is filed after the date of the Notice in exercising their discretion to accept escrow arrangements consistent with the Proposal in lieu of escrow arrangements under existing policies. No provision is being made at this time for conversion of the terms of escrow arrangements that predate the Notice.

Much of the framework of the Proposal is derived from the 1998 proposal. Significant changes from the 1998 proposal include:

- Shorter escrow periods and faster escrow releases;
- Simpler escrow classifications for issuers that are based on listing categories of Canadian exchanges;
- An expanded exempt category;
- Changes to the category of "principals" whose securities are subject to escrow;
- Permitted sales to the public by secondary distribution at the time of an issuer's IPO, of securities held by a securityholder that is or would otherwise be a principal, on conditions designed to couple flexibility for principals with full disclosure and fairness to IPO investors; and
- Changes to permitted transfers within escrow.

For more information, please call **Rick Whiler**, Senior Accountant, Corporate Finance, (416) 593-8127.

(2000) 3 OSCB March 17 Page 1936

Disclosure of Changes in Calculating MER

On April 7, 2000 the CSA issued Staff Notice No. 81-306 dealing with Disclosure by Mutual Funds of Changes in Calculation of Management Expense Ratio.

On February 1, 2000, National Instrument 81-102 Mutual Funds came into force across Canada. Section 16.1 changes the method of calculating management expense ratios(MERs) and requires mutual funds to re-calculate MERs for financial periods that ended before the National Instrument came into force. A mutual fund is required to disclose its MER for the last five completed financial years in its financial statements and the simplified prospectus.

Based on comments from The Investment Funds Institute of Canada (IFIC) and fund companies about the difficulty of complying with this, on January 28, 2000, the CSA published for comment amendments to deal with issues concerning MERs.

Via these amendments, the CSA propose to add section 16.3 to the National Instrument, along with a revised section 20.3. Proposed section 16.3 states that the MER calculation in section 16.1 does not apply to the disclosure and calculation of the MER for a financial period that ended before February 1, 2000. Mutual funds will have the option of restating MERs for prior periods in accordance with the National Instrument or disclosing MERs for those periods as calculated in accordance with securities legislation in force as at January 31, 2000.

CSA staff published Notice 81-306 to provide guidance to mutual funds regarding disclosure of the effect of this change to the calculation of MER. CSA staff are of the view that mutual funds must provide consistent disclosure concerning changes in the calculation of MERs in order to assist investors in understanding the change and to assist them in comparing the MERs of different mutual funds. The Notice is published in the April 7 OSC Bulletin.

For more information, please call **Anne Ramsay**, Senior Accountant Investment Funds, Capital Markets, (416) 593-8243.

(2000) 23 OSCB April 7 Page 2476

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

Amalgamated Income Limited Partnership and 479660 B.C. Ltd.

On April 26, 2000, the Ontario Securities Commission issued a Notice of Hearing and related Statement of Allegations against Amalgamated Income Limited Partnership and 479960 B.C. Ltd. The hearing was held on May 11, 2000 to consider whether to approve a proposed settlement on this matter.

Amalgamated is a limited partnership and reporting issuer in all provinces of Canada. It is engaged in the business of acquiring, holding and trading units of a mutual fund limited partnerships. The general partner of Amalgamated is 479660, a company incorporated under the laws of the Province of British Columbia. 479660 has carried on business as the general partner of Amalgamated since November 18, 1994.

In early 1995, Amalgamated commenced purchasing units in certain limited partnerships. During the material times, Amalgamated breached the requirements of the Ontario *Securities Act* as follows:

- The company failed on several occasions to disclose information with regards to the acquisition of certain Limited Partnerships;
- It failed to file Early Warning Reports, Insider Trading Reports and Annual Filings;
- It failed to honour commitments made to the OSC that would bring its filings up to date; and
- It failed to pay certain filing fees.

On May 11, 2000, the Commission did not approve the proposed settlement, stating that the proposed sanctions were not proportionate to the offences. A further hearing on this matter will be scheduled at a later date.

Norman Maxwell, Antonino Candido and John Dzambazov

On April 14, 2000, the Ontario Securities Commission approved a settlement agreement between Staff and Norman Maxwell, Antonino Candido and John Dzambazov. The settlement agreements relate to a Notice of Hearing and Statement of Allegations which were issued against Maxwell, Candido and Dzambazov on July 4, 1995.

In the Settlement Agreements each of Maxwell, Candido and Dzambazov admitted that the financial statements of Megalode Corporation, a reporting issuer at the material time, for the periods ended May 31, 1993 and February 28, 1994, were untrue in a material respect. All three respondents also admitted that their involvement in the events leading to the preparation of the financial statements as officers and directors of Megalode or related issuers was contrary to the public interest and violated paragraph 122(1)b of the Act.

In addition, Maxwell and Candido admitted that they had engaged in insider trading of the shares of Megalode contrary to subsection 76(1) of the Act.

The Commission imposed sanctions against Messrs. Maxwell, Candido and Dzambazov. Mr. Maxwell is prohibited from trading securities for a period of ten years from the date of the Temporary Order made against him on January 15, 1996 except that he will be permitted to trade for his personal account in mutual fund securities and securities described in clauses 1 and 2 of the subsection of the Act; he is prohibited from becoming or acting as a director of a reporting issuer for a period of ten years from the date of the Temporary Order made against him on January 15, 1996; and was reprimanded.

Mr. Candido is prohibited from trading in securities for a period of eight years from the date of the Temporary Order made against him on January 15, 1996 except that he will be

permitted to trade for his personal account in mutual fund securities and securities described in clauses 1 and 2 subsection 35(2) of the Act; he will resign from all positions he currently holds as a director or officer of a reporting issuers; he is prohibited from becoming or acting as a director or officer of a reporting issuer for a period of eight years from the date of this Order; and was reprimanded.

Mr. Dzambazov is prohibited from trading in securities for a period of six years from the date of the Temporary Order made against him on January 15, 1996 except that he will be permitted to trade for his personal account in mutual fund securities and securities described in clauses 1 and 2 of subsection 35(2) of the Act; he will resign from all positions he currently holds as director or officer of a reporting issuers; he is prohibited from becoming or acting as a director or officer of a reporting issuers for a period of six years from the date of this Order; and was reprimanded.

Mikael Prydz

On March 31, 2000, the Ontario Securities Commission set a date for the hearing of the allegations against Mikael Prydz. The hearing was scheduled on April 13, 2000.

On March 22, 2000, the Commission issued a second Notice of Hearing and Statement of Allegations against Mr. Prydz. The proceeding relates to breaches by Mr. Prydz of undertakings he provided to the Commission and of a Commission order approving a settlement agreement dated February 8, 2000.

Staff alleged Mr. Prydz violated the terms of the settlement agreement and the order of the Commission by failing to remove language from the web site of his employer. In addition, he failed to provide staff with a complete list of investors to give effect to his undertaking to send a letter to all investors. He also sent a letter to investors which contradicted his admissions in the settlement agreement. Finally, staff alleged that Mr. Prydz' conduct demonstrated a complete disregard for the Commission's process.

A proceeding against Mikael Prydz was heard on April 13, 2000. In its decision, issued May 10, 2000, the Commission held that Mr. Prydz "knowingly and intentionally failed to honour the Settlement Agreement which he had entered into voluntarily in order to settle the previous proceedings". The Commission also held that Mr. Prydz showed a disregard for the securities laws of this province and disrespect for the Commission.

The Commission made the following orders against Prydz:

1) He is prohibited from trading in securities for a period of ten years from February 8, 2005. This order is in addition to the cease trade order imposed on him by the Commission on February 8, 2000 for a period of five years;
2) He shall resign all positions that he holds as a director or officer of an issuer;
3) He is prohibited from becoming or acting as a director or officer of any issuer during the period from the date of the Commission's decision until February 8, 2015; and
4) He was reprimanded.

A.C. MacPherson & Co. Inc. and Geno Della Rocca

On March 28, 2000, the Commission issued a Notice of Hearing and Statement of Allegations against A.C. MacPherson & Co. Inc. and Geno Della Rocca. The allegations relate to A.C. MacPherson's conduct in selling shares of two issuers to the firm's own clients during 1996 and 1997. A.C. MacPherson is registered as an investment dealer. Mr. Della Rocca is the president and chief executive officer of the firm.

Staff alleged that A.C. MacPherson's business consisted almost exclusively of acquiring stock in a very limited number of companies and then selling that stock to the firm's own clients. Staff alleged that in the case of two companies, A.C. MacPherson acquired the stock at a significant discount to the market price, then imposed excessive markups on those shares before reselling the shares to its own clients. The firm made a profit of several million dollars in each case.

On April 6, 2000, the Commission approved a settlement agreement between staff and A.C. MacPherson & Co. Inc., and Geno Della Rocca. In approving the settlement, the Commission found that A.C. MacPherson stood in a position of trust with its clients, and in selling stock to its own clients it was required to abide by a high standard of conduct. Imposing excessive markups in the manner admitted by A.C. MacPherson led to a substantial risk that there was a fundamental conflict of interest with its clients. The Commission noted A.C. MacPherson's admission that the firm's conduct was contrary to the public interest. The Commission also noted Mr. Della Rocca's admission that by allowing A.C. MacPherson to engage in this conduct, he acted contrary to the public interest. The Commission reprimanded both parties. The Commission ordered the registration of A.C. MacPherson be suspended effective July 5, 2000, and to wind up its business by that time. The Commission also imposed interim terms and conditions on the firm's registration, to ensure that the firm's affairs are wound up in an orderly manner, and in a way that will offer the best possible protection to clients of the firm.

Mr. Della Rocca is prohibited, for a period of fifteen years, from applying for registration in any capacity with the Commission, or for acting as a director or officer of a reporting issuer. He is also prohibited for the rest of his life from being involved directly in the management of a registrant, and is prohibited for the rest of his life from owning, directly or indirectly, more than a 20% interest in any registered firm. The respondents were ordered to pay $25,000 to the Commission in respect of a portion of the Commission's costs of investigating the matter.

Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall

A judicial pre-trial conference was held on March 24, 2000 in the Ontario Court of Justice proceeding against Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall. The trial in respect of this matter is scheduled for four weeks beginning on October 10, 2000. The pre-trial conference in respect of this matter is scheduled to continue on June 6, 2000.

Craig Jaynes

On March 1, 2000, a Director of the Ontario Securities Commission released her reasons for decision in dismissing an application by Craig Jaynes, a former salesperson at Marchment & MacKay Limited, for registration with a new firm.

In her reasons, the Director noted that the registration of Marchment & Mackay had been terminated by the Commission on August 3, 1999, after a lengthy hearing. Mr. Jaynes worked at Marchment from November 1995 until July of 1999.

At the hearing to consider Mr. Jaynes application, he acknowledged he had repeatedly breached his obligations as a registrant during his time at Marchment. He admitted that when engaged in the sale of principal securities promoted by Marchment, he did not act in his clients' best interests. The Director found that Mr. Jaynes' conduct fell short of that expected of a registrant. Instead of acting in his clients' best interests, he acted contrary to their interests and in a manner intended to further his own economic interests." The Director held that to reinstate Mr. Jaynes as a registrant "despite his inappropriate past conduct and serious breaches of his duties as a registrant...would be to send an unequivocal message to the marketplace that such conduct has little consequence. Such a message would be inconsistent with the Director's obligation to act in accordance with the Commission's investor protection mandate. Mr. Jayne's conduct as a registrant had clear consequences for many of his clients at Marchment. That such conduct should have little or no consequences for Mr. Jaynes, or indeed others who would follow his example and breach their obligations in like fashion is inconceivable..."

Jeffrey Robinson, Peter Robinson and Terence Edward Robinson

On March 1, 2000, the Ontario Securities Commission announced that the Superior Court of Justice (Divisional Court) released its decision and reasons, dismissing an appeal brought by Jeffrey Robinson, Peter Robinson and Terence Edward Robinson.

In May of 1996, after one of the longest hearings in OSC history, the Commission found a number of individuals engaged in a deliberate and contrived scheme involving manipulative or deceptive trading activities in relation to the securities of three public companies. The principal respondent was Jeffrey Robinson, a registered broker at the time. In June 1996, the panel ordered that various exemptions contained in Ontario securities law would no longer apply to the individual respondents for periods ranging from seven years.

Robinson's brother and father were among the other respondents. Those three individuals appealed the Commission's decision.

The appellants claimed that the proceeding against them before the Commission should not have continued after the death of one of the three panel members. The appellants also claimed the Commission applied an incorrect standard of proof, that the evidence did not support the conclusions reached, and that the reasons delivered by the Commission were insufficient.

The Divisional Court found no merit in any of the grounds of appeal raised by the appellants.

RECENT SPEECHES

David Brown at the IOSCO Conference, Sydney Australia, May 17, 2000

The fast-paced development of new products is helping to erase the lines used to separate one financial sector from another. In many countries financial service providers were historically segregated by sector. Companies providing financial products fit clearly and neatly into a specific category: they were banks or insurance companies; they were securities firms or fiduciary estate-management institutions. In Canada, we called them the four pillars, and they were just as unmovable. There was very little overlap in products and services. Cross ownership was prohibited, or at least limited.

But the four pillars have melded together. As financial institutions matured, and in some cases demutualized and became listed companies, they found it necessary to branch out into a broader range of products and services in a continuing drive for growth. Increasingly, financial services are being delivered by conglomerates integrated across sectors, and across borders. It is becoming difficult to say what the core business of a given financial service provider really is.

Insurance companies for example, which used to restrict themselves to selling life insurance or annuities, are now selling policies that have the same economic effect as mutual funds. Banks are offering deposit accounts where the return depends on changes in the price of stock indexes or the value of a specified portfolio of assets. How is that different from a mutual fund?

The people selling the products are also becoming harder to distinguish. Roughly 75 per cent of insurance agents in the Province of Ontario also sell mutual funds. Whether or not they are regulated, and by whom, depends upon what they happen to be selling at a given moment. If it's a mutual fund, the securities regulator regulates them. If it's an insurance-based investment fund, they're regulated by an insurance regulator. Jurisdiction could change during the course of a conversation between agent and client.

In Canada, as in other countries, almost everything about the world of financial services seems to be converging – except the institutions that regulate them. The chasm between the regulatory world and the market is widening, creating regulatory overlap and duplication for financial firms, and gaps in the regulatory network for consumers.

Investors have a right to a regulatory regime that recognizes these new economic and demographic realities. How do regulators address this? I believe that we must assess whether we have the jurisdictional structure, the operating structure, the decision-making capacity, the resources, and even the mindset to regulate effectively in the 21st century – and we must go about making the changes that may be required to ensure our ability to do so.

One of the most important questions facing regulators is: Do we have the jurisdictional structure to deal with financial sectors that are converging? When the regulated sectors are becoming increasingly intertwined, how long can regulators remain separated?

Our host country of Australia dealt with that question by revising its regulatory structure to address convergence ? shifting from specialized regulation divided by sector to across-the-board regulation based on the actual function the regulators fulfill.

There may be little distinction among financial service providers, but there is a great deal of difference between the functions fulfilled by various forms of regulation. The goals of protecting consumers and maintaining the efficiency and integrity of the marketplace are distinctly different from the goal of prudence – reducing the risk of insolvency among financial institutions. The difference between market conduct regulation and prudential regulation can be felt in terms of the role, culture and mindset of the regulator, and its relationship to the institutions it regulates.

Market conduct regulation is based first and foremost on a commitment to transparency: ensuring that everyone has a fair base of information to allow them to make investment decisions. As securities regulators, transparency is part of our institutional DNA. It governs everything we do – including the way we orient staff, and how we communicate with stakeholders.

Prudential regulation, on the other hand, sometimes dictates non-disclosure – or at least delayed disclosure. In Canada, it is proposed that a bank will not be permitted to make public disclosure of the banking regulator's assessment of its financial viability, even if the banking regulator expresses concern. The goal is to prevent a run on the bank, rather than ensure a continuing flow of information to shareholders.

Faced with similar issues, different kinds of regulators respond with totally dissimilar approaches. A market conduct regulator would require immediate disclosure. A prudential regulator would say "not until after you close your doors – or until after we fix the problem".

It's difficult for a regulator to continually demand transparency in one area, but frequently block it in others.

For that reason – with all due respect to the U.K. Financial Services Authority – I believe that trying to consolidate market regulation with prudential regulation would be like merging fire and water; one would consume the other.

But the notion of providing cross-sector market regulation, as practised in this country, is a natural fit. Ontario moved to adopt this approach earlier this month, when the Minister of Finance announced in his budget that he would create a comprehensive financial services regulator. The new structure will combine the Ontario Securities Commission with the insurance and pension regulator, the Financial Services Commission of Ontario.

The new entity will eliminate the mismatch between regulation and reality. Securities, insurance and pension regulators will no longer travel on different paths, no longer duplicating each other, no longer contradicting each other.

A comprehensive financial services authority can ensure a consistent regulatory approach, eliminate public confusion as to who regulates what, offer one-window service for both consumers and providers, enhance the competitiveness of the financial services sector, and improve the overall investment climate.

We have learned a lesson that I believe applies everywhere: financial service regulation must become as integrated as the financial services industry.

Ladies and gentlemen, with more people investing in increasingly innovative ways, regulators can no more afford to become comfortable than those that we regulate. The continual challenge facing us today is to maintain the traditional principles behind regulation, while applying them to a non-traditional world. We've learned the value of integration; next lesson: innovation.

The marketplace is continually changing; our task is to constantly keep in touch with it. Our rulebook of regulations has become entrenched; our role is to relentlessly question whether the old rules still apply. Our economic world is growing, converging, and accelerating; our challenge is to ensure our continued relevance in it.

Thank you.

Remarks of John A. Geller, Q.C. Vice-Chair, Ontario Securities Commission to the Federated Press Securities Compliance Conference

The principal message which I want to leave with you today is that compliance, even if it costs money and may sometimes be difficult, is not something to be considered as an unnecessary imposition by the regulator. Rather, an effective compliance structure is nothing more or less than good business practice, one of the necessary safeguards which must be put in place for the protection of the market participant itself. Just as an effective internal audit system is a safeguard against fraud and defalcation, and operates to protect the financial assets of the registrant or issuer, so an effective compliance system is a safeguard against improper activities which could get the market participant into serious trouble with the regulator. This could also, in the case of a registrant, cause the participant to lose its credibility with its customers, and in the case of an issuer, with its investors and potential investors. It goes without saying that it is much cheaper in every way, to stay out of trouble than to try to get out of trouble once you are in to it...

Compliance and Enforcement are part of a continuum. However, the object of the Commission's compliance activities is not to provide grist for the Enforcement Branch's mills. Of course, if a compliance review reveals egregious practices by a market participant, these will normally be referred by Compliance to Enforcement. But the principal purpose of a compliance review of a registrant is to help the registrant to understand its regulatory obligations, and to bring its practices into compliance. We are convinced that most dealers and advisors want to comply with regulatory requirements. They recognize that an effective securities regulatory system is in the best interests of all market participants. But often, although it is their obligation to understand the rules, they don't fully do so. We understand that, even though we are spending a great deal of time and effort in making our rules clear and unambiguous, they are nevertheless, of necessity, detailed, voluminous and unfortunately, quite complicated. This is why we are also devoting a good

deal of time and effort to helping our registrants to understand the rules.

To the extent that the registrant's own compliance activities are not operating effectively or satisfactorily, our Compliance group will point out the gaps. To the extent that a registrant's activities are not in compliance with the law, the Compliance group will point this out as well. The primary objective is to help registrants to be compliant.

If on a follow-up compliance audit, the problems are found not to have been corrected, the registrant can and should expect a referral to the Enforcement Branch. The Compliance group wants to help those who want to be helped. Those who do not want to be helped, or want to help themselves, are another matter.

I would also like to make it absolutely clear that "but everyone does this the same way, so why pick on us" will not be an acceptable defence to non-compliance. We are trying to make it clear that we expect everyone to be in compliance. We recognize that it will take us a while to get around to auditing all of our direct registrants or reviewing the continuous disclosure files of all issuers. In the meantime however, we are not prepared to permit those who have been audited or reviewed to continue to engage in improper practices. Indeed, we publish lists of the deficiencies we find in our compliance audits. As time goes by, we will become less patient with those who fail to correct the sorts of problems which we advise that we are finding and are concerned with.

Market participants tell us that they want a strong, effective regulator which enacts clear, unambiguous and practical rules. This expressed wish is based on the desire on their part to be compliant and for us to make compliance easier by letting them know clearly what is expected of them.

The Commission is dedicated to making the rules clear and "compliance friendly". We are committing considerable resources to our rule reformulation process and we will continue to focus on the need to have rules that are "real world", or in other words, that are comprehensible and achievable.

(OSC, FSCO To Merge)

In a recent letter to market participants from OSC Chairman David Brown, he noted that these changes have resulted in "unprecedented market innovation," but also have "exposed significant gaps and expensive overlaps in our regulatory system." Mr. Brown said that "a single provincial authority will provide a consistent regulatory approach, eliminate public confusion as to who regulates what, offer one-window service for both consumers and providers, and enhance the competitiveness of the Ontario financial services sector." The OSC will continue to consult with industry participants and communicate developments as the merger progresses.

Mr. Brown said that "a single provincial authority will provide a consistent regulatory approach.

Perspectives is published quarterly by the Corporate Relations Branch of the Ontario Securities Commission. *Perspectives* welcomes letters to the editor.

If you wish to be on the mailing list for *Perspectives*, please contact us at:

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The OSC web site www.osc.gov.on.ca includes: Information on the OSC, Investor Information, Rules and Regulations, Enforcement Information and Market Principles.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 3, Issue 3

SUMMER 2000

inside...

Alternative Trading System Proposal

The OSC has published a special supplement to the OSC Bulletin on the Alternative Trading System (ATS) Proposal .....page 2.

RCMP, OSC To Set Up Securities Fraud Unit

The OSC and RCMP will establish a joint Securities Fraud Unit to target criminal activity in the capital markets.....page 3.

OSC Launches Continuous Disclosure Review Program

The OSC will regularly review the continuous disclosure of every Ontario-based company under a new program that began July 1, 2000.....page 4.

Staff Report on Corporate Disclosure Survey

OSC Staff have released a report on corporate disclosure policies and practices. .....page 4.

CSA Issues Report on Fund Governance

The CSA have released a report on fund governance called "Making It Mutual: Aligning the Interests of Investors and Managers – Recommendations for a Mutual Fund Governance Regime for Canada." .....page 6.

FEATURE

New Economy.ca A Risk-Reward Trade-Off

While the changes associated with the web are in many ways unprecedented, they also present a classic risk-reward trade-off well documented in economic theory and market analysis. The shift to the web as a purveyor of information and execution is still in its infancy with many unexpected developments still to come, but the risk-reward profile for the economy, the capital markets and the regulators has begun to take shape.

The radical expansion in the economy can be traced to a significant extent to changes that have taken place as a result of web-based innovation. Historically, cost-based spirals in inflation have forced monetary authorities to tighten monetary policy, usually to the point where equity prices and the economy have contracted. Disintermediation impact of the web has delayed this development well beyond the norm. Estimates for potential saving have run over 10% of GDP. Increased productivity reduces inflationary pressure and allows the central banks to run relatively easy monetary policy.

Wage rate increases have been relatively low given extremely low rates of unemployment in Canada and the U.S. in recent years. The reason for this is part demographic (older boomers tend to have more stable income) and part measurement. The measurement factor represents both risk and reward.

(continued on page 11)

INDEX

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Alternative Trading System Proposal

The OSC has published a special supplement to the OSC Bulletin on the Alternative Trading System (ATS) Proposal. The Special Supplement contains the proposed National Instruments and OSC Rules relating to the proposal.

The ATS proposal sets out a scheme for regulating ATSs by giving them a choice of how they are to be regulated. An ATS can choose to be either an exchange, a member of an exchange or a dealer with additional requirements. The ATS proposal seeks to minimize fragmentation by setting out requirements for order and trade reporting, information consolidation and market integration. In addition, the ATS proposal is designed not only to maintain market integrity but to improve it through the Proposed Trading Rule.

In sum, the regulatory objective of the ATS proposal is to provide investors with choice, improved price discovery and less expensive execution costs.

"An ATS can choose to be either an exchange, a member of an exchange or a dealer with additional requirements."

As part of its overall proposal regarding ATSs, the Canadian Securities Administrators (CSA) is republishing for comment two proposed national instruments and related documents.

The documents are proposed National Instrument 21-101 Marketplace Operation and the related Companion Policy and forms, and proposed National Instrument 23-101 Trading Rules and the related Companion Policy.

The Commission is also publishing for the first time proposed Ontario Securities Commission Rule 23-502 The Reported Market.

The CSA is also distributing a request for proposal for the establishment of a data consolidator to receive and collect quotation and transaction information from each marketplace and to disseminate consolidated information to market data vendors, news services and other customers. The RFP can be viewed on the OSC website **www.osc.gov.on.ca**

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257, or **Tracey Stern**, Legal Counsel, Market Regulation, (416) 593-8167.

(2000) 23 OSC (Supp) July 28, 2000

Exemption From Certain Insider Reporting Obligations

The CSA have requested comment on proposed changes to National Instrument 55-101 regarding Exemption from Certain Insider Reporting Requirements.

The purpose of the proposed National Instrument is to provide certain exemptions from the obligation to file insider reports. In general, the Proposed National Instrument:

- Provides an exemption from the obligation to file insider reports for certain directors and senior officers of subsidiaries and affiliates of insiders who neither hold the securities of a reporting issuer in significant amounts, nor are in a position to acquire knowledge of undisclosed material information;
- Permits directors and senior officers of a reporting issuer or a subsidiary of the reporting issuer to report acquisitions of securities of the reporting issuer under automatic securities purchase plans on an annual basis in most circumstances;
- Permits issuers conducting normal course issuer bids to report acquisitions of securities under such bids on a monthly basis; and
- Permits insiders of a reporting issuer to report changes in direct or indirect beneficial ownership of, or control or direction over, securities by such insiders pursuant to certain issuer events, such as a stock dividend, stock split, consolidation, amalgamation, reorganization or merger, at the time of their next required insider report.

For more information, please call **Iva Vranic**, Manager, Corporate Finance Team 2, (416) 593-8115.

(2000) 23 OSCB June 16, 2000 p. 4212

Proposed Rule On Non-Resident Advisors

The rule on Non-Resident Advisors was delivered to the Minister of Finance on September 13, 2000. If the Minister does not approve the rule, reject the rule or return it to the Commission for further consideration, the rule will come into force on November 27, 2000. If the Minister approves the rule, the rule will come into force 15 days after it is approved.

The rule provides certain exemptions from section 25 of the *Act* for non-resident persons or companies in connection with their advisory activities in Ontario, where the nature of those activities is not such that the public interest requires registration. In addition, the rule provides those non-resident persons or companies with an exemption from certain requirements otherwise applicable to applicants for registration as, or registrants in the categories of, investment counsel or investment counsel and portfolio manager, who are prepared to accept conditions on their registration that limit the clients to whom advisory services may be provided.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257, or **Barbara Fydell**, Legal Counsel, Market Regulation, (416) 593-8253.

(2000) 23 OSCB June 23, 2000 p. 4393/Sept. 22, 2000 p.6541

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

Ontario Issues Discussion Paper On OSC, FSCO Merger

The Ontario government has issued a Discussion Paper on the proposed merger of the OSC and the Financial Services Commission of Ontario (FSCO), announced in the 2000 Ontario Budget. The new financial services regulator is to be called the Ontario Financial Services Commission (OFSC).

The government intends to introduce legislation in the fall to create the OFSC as a Crown Corporation with self-funding and rule-making authority for regulating financial services in the Province. The OFSC would administer, under the authority of a new Act, the statutes which are currently the responsibility of FSCO and the OSC.

Feedback on the Discussion Paper will form the basis for the legislation. It is proposed to introduce a single bill that would be proclaimed in two phases. In the first phase the OFSC would be established while the OSC and FSCO would continue to be separate. In the second phase, the OSC and FSCO would merge.

The discussion paper is available on the OSC website at **osc.gov.on.ca**

Presentation To Legislative Committee

Susan Wolburgh Jenah, OSC General Counsel, recently submitted a presentation to the Standing Committee on Banking, Trade and Commerce respecting Bill S-19, Amendments to the Canada Business Corporations Act (CBCA).

In her submission, Ms. Jenah noted that the Commission strongly supports the efforts made under the Bill to eliminate redundant and overlapping regulation in areas already regulated by provincial securities regulation. The Commission also supports the model of reform used to effect many of the changes under the bill. Ms. Jenah noted that "by moving a number of the technical and mechanical details that are currently part of the CBCA to the regulations, we believe that the Government will be better positioned to adapt to market changes and trends."

The submission also comments on several specific areas, including the proposed amendments to the CBCA relating to insider trading, take-over bids and going private transactions, shareholder communications and proxy rules, electronic communications, the introduction of proportionate liability, and auditor independence. The submission is reprinted in the June 2 edition of the OSC Bulletin.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245.

(2000) 23 OSCB June 2, 2000 p 3795

RCMP, OSC To Set Up Securities Fraud Unit

The OSC and the Royal Canadian Mounted Police (RCMP) have signed Terms of Reference to establish a joint Securities Fraud Unit. The unit will target criminal activity in the capital markets, and in particular, organized crime in the stock market.

The unit will develop information and intelligence from partnerships within securities industry. This intelligence will be used for proactive investigations of any fraudulent activity, including money laundering. The RCMP and the OSC believe that partnering to form a strong intelligence gathering and enforcement unit will best address the challenges to what are often long, complex and difficult investigations.

For more information, please call **Frank Switzer**, Director, Communications Branch (416) 593-8120, or **Michele Paradis**, Royal Canadian Mounted Police, (416) 952-4619.

OSC Launches Full-Scale Continuous Disclosure Review Program

The OSC will regularly review the continuous disclosure of every Ontario-based company under the new Continuous Disclosure Review Program. The full-scale program began July 1, 2000.

The program is an initiative of the OSC's Continuous Disclosure Team created last year. Currently at 17 members, the team plans to expand to 23 members by March 2001.

"Companies with an Ontario head office will undergo a continuous disclosure review once every four years on average."

The OSC's goal is for companies with an Ontario head office to undergo a continuous disclosure review once every four years on average, according to Kathryn Soden, Director of Corporate Finance. Companies will be subject to a full, issue-oriented or limited review based on selective review criteria. These criteria are designed to select reporting issuers in a given year where there appears to be greater risks that disclosure issues may exist. The three levels of continuous disclosure review are similar to those used by Corporate Finance when reviewing prospectus filings.

In order to prepare companies, the OSC issued a Notice on the Review Program. This Notice also discusses the impact that the increased focus on continuous disclosure will have on prospectus and rights offering circular reviews. The Notice can be viewed on the OSC's website at **www.osc.gov.on.ca.**

For more information, please call **Kathryn Soden**, Director, Corporate Finance Branch, (416) 593-8149, or **John Hughes**, Manager, Continuous Disclosure, (416) 593-3695.

(2000) 23 OSCB June 30, 2000 p. 4523

Staff Report on Corporate Disclosure Survey

Current corporate disclosure policies and practices generally do not sufficiently reduce the potential for selective disclosure, according to the OSC's final report on its corporate disclosure survey.

In October 1999 the Commission sent out a survey to 400 randomly selected public companies. One hundred and seventy companies responded, answering questions on their disclosure policies and practices.

The survey found:

- 71% of respondents do not have written corporate disclosure policies.
- 81% reported that they have one-on-one meetings with analysts;
- 98% reported that they typically comment in some form on draft analyst reports; and
- 27% indicated that they express a level of comfort on earnings projections.

"Twenty-seven percent indicated that they express a level of comfort on earnings projections."

The Commission plans to publish for comment this fall, a policy statement that will address best disclosure practices for issuers that provide investors with fair access to information and ways to avoid selective disclosure when dealing with analysts and institutional investors. In its report on the survey, OSC staff listed a number of good disclosure practices. These include:

- Have a written disclosure policy.
- Limit the number of authorized spokespersons.
- Open up access to conference calls.
- Disseminate information using advances in technology, such as the Internet.

OSC staff also reminds market participants that the *Securities Act* has existing provisions that prohibit selective disclosure of material changes and material facts.

In a related development the Toronto Stock Exchange, the Vancouver Stock Exchange, the Alberta Stock Exchange and the Investment Dealers Association established the Securities Industry Committee on Analyst Standards. The Committee will review analysts' practices and standards of conduct and supervision, and will make recommendations in order to preserve the integrity of the capital markets.

For more information, please call **John Hughes**, Manager, Continuous Disclosure, (416) 593-3695, **Rossana DiLieto**, Legal Counsel, General Counsel's Office (416) 593-8106, or **Lisa Enright**, Senior Accountant, Continuous Disclosure (416) 593-3686.

(2000) 23 OSCB July 28, 2000 p. 5098

OSC Recommends Mutual Fund Dealers Stop Using Unlimited Powers of Attorney

To reduce the potential for unauthorized discretionary trading, OSC staff have recommended that mutual fund dealers stop using powers of attorney that confer unlimited authority and discretion over their clients' accounts. Unlimited powers of attorney, letters of authorization or trading authorizations (collectively "powers of attorney") are commonly used in the mutual fund industry because of the impracticality of obtaining a client's signature for every trade.

In order to ensure powers of attorney are used appropriately, the OSC staff recommends that dealers develop a standard document or form of power of attorney. Among other features, this document would clearly state that the dealer's representative must obtain prior specific consent from the client for each trade, and that he or she may not make any decision to buy or sell mutual fund securities on behalf of the client.

"Staff also recommends that dealers set up control procedures to monitor the use of powers of attorney."

Staff also recommends that dealers set up control procedures to monitor the use of powers of attorney. Recommended procedures include attaching a copy of the power of attorney to each trade order form; maintaining a copy of the power of attorney on file with the dealer at head office; appropriate supervision to ensure all transactions are performed according to the clients' specific instructions; plus other appropriate internal controls and written procedures to monitor the use of powers of attorney.

For more information, please call **Elle S. Koor**, Senior Accountant, Compliance, (416) 593-8077, **Christina Forster**, Senior Accountant, Compliance, (416) 593-8061, **Felicia Tedesco**, Senior Accountant, Compliance, (416) 593-8273, or **Antoinette Leung**, Senior Accountant, Compliance, (416) 595-8901.

(2000) 23 OSCB August 4, 2000 p 5269

Calculator Shows Impact of Mutual Fund Fees

The OSC and Industry Canada's Office of Consumer Affairs have unveiled an interactive Mutual Fund Fee Impact Calculator. The Calculator will enable consumers to find out how much their mutual fund fees affect their investment returns over time. Wrap around educational content is also featured along with helpful links.

The Calculator was launched in June. It is available on the websites of both the OSC **www.osc.gov.on.ca** (Investor Resources, Tools) and Industry Canada **ConsumerConnection.ic.gc.ca**

For more information, please call **Nancy Stow**, Manager, Investor Education, (416) 593-8297.

(2000) 23 OSCB June 23, 2000 p. 4342

IOSCO Recent Publications

A Working Party of the Technical Committee of the International Organization of Securities Commissions (IOSCO) has published two new reports on the management of mutual funds. They are: *"Summary of Responses to the Questionnaire on Principles and Best Practices Standards on Infrastructure for Decision Making for CIS Operations"* Report of the Technical Committee, May 2000.

"Conflicts of Interest of CIS Operators" Report of the Technical Committee, May 2000

OSC staff participates in Working Party No. 5 on Investment Management, which prepared the reports. Both reports are available on the IOSCO website **www.iosco.org**

For more information, please call **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129.

(2000) 23 OSCB July 7, 2000 p. 4692

SRO Membership – Mutual Fund Dealers

The Mutual Fund Dealers Association (MFDA) is moving closer to becoming a Self-Regulatory Organization (SRO) for mutual fund dealers.

The OSC has published proposed changes to proposed Rule 31-506, which requires all mutual fund dealers to be members of the Mutual Fund Dealers Association once the MFDA is recognized by the Commission as a SRO for mutual fund dealers. The Commission has also published for comment its proposed criteria for determining whether to recognize the MFDA as a SRO for mutual fund dealers, and the MFDA's response. Along with these documents, the Commission published the draft rules and by-laws of the MFDA for comment.

In addition, the Commission has responded to comments on the version of the Rule published earlier. The OSC noted that many of the comments on the proposed Rule were in fact comments on the perceived drawbacks of the MFDA, not the Rule per se. The Commission suggests that commentators review the MFDA Recognition Package and provide their comments on these documents, if they continue to have concerns about the MFDA.

The Commission is working towards having the proposed Rule become effective and the MFDA recognized on January 1, 2001.

For more information, please call **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129, or **Tamara Hauerstock**, Legal Counsel, Investment Funds, (416) 593-8915.

(2000) 23 OSCB (Supp.) June 16, 2000

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

Amendments Would Ease 10% Rule For Index Funds

In order to enable index mutual funds to replicate the performance of their target indices, the CSA has published for comment proposed amendments to National Instrument 81-102 Mutual Funds and National Instrument 81-101 Mutual Fund Prospectus Disclosure. The amendments allow an index mutual fund to invest more than 10 percent of its net assets in one issuer provided certain restrictions are met and disclosure made. The proposal would also require an index mutual fund to include specific disclosure in its simplified prospectus about the risks inherent in the fund investing based on an index that is not widely diversified.

"The amendments would allow an index mutual fund to invest more than 10 percent of its net assets in one issuer provided certain restrictions are met and disclosure made."

The CSA proposed other amendments relating to management expense ratio disclosure and the appropriate disclosure for mutual funds offering multiple classes of securities.

For more information, please call **Chantal Mainville**, Legal Counsel, Investment Funds, (416) 593-8168 or **Anne Ramsay**, Senior Accountant, Investment Funds, (416) 593-8243.

(2000) 23 OSCB June 16, 2000 p. 4195

New Software Tracks Illicit Trading Activity

Canadian securities regulators have teamed up with Canada's stock exchanges and the RCMP to develop and launch a new computer program that will help detect securities fraud and suspect trading practices.

MICA, the Market Integrity Computer Analysis System, recreates the purchase and sale of securities. A key feature is MICA's ability to identify which purchaser bought shares from a particular seller. This ability to link trading activity with purchasers and sellers will assist in the investigation of suspected cases of market manipulation by reducing the time needed for analysis from months to weeks.

For more information, please call **George Gunn**, **(416) 593-8288**, Manager, Surveillance, Enforcement Branch.

(2000) 23 OSCB June 16, 2000 p. 4148

CSA Issues Report On Fund Governance

In a move that OSC Chairman David Brown called "a leap forward in our thinking about the regulatory framework for mutual funds and other investment funds," the CSA has released a report on fund governance. The report is called *"Making It Mutual: Aligning the Interests of Investors and Managers – Recommendations for a Mutual Fund Governance Regime for Canada."*

The report is expected to serve as a guide for Canadian regulators as they prepare to design and implement a governance regime for mutual funds. The report was written for the CSA by Stephen Erlichman, a Senior Partner with the law firm of Fasken Martineau DuMoulin LLP.

The report is available on the OSC website at **www.osc.gov.on.ca** or by calling the OSC publications line (416) 593-8314.

For more information, please call **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129.

(2000) 23 OSCB July 28, 2000 p.. 5115

Revised SEDAR System

CSA staff have requested comment on changes, additions or improvements for a revised SEDAR system to be known as SEDAR II. It is proposed that SEDAR II be operational in the fall of 2002.

Based on preliminary analysis and discussions, SEDAR II is likely to be an Internet-based system that will combine the current SEDAR and SEDAR.com, the website through which documents filed on SEDAR are available.

For more information, please call **Marrianne Bridge**, Senior Accountant, Advisory Services, Corporate Finance, (416) 593-8907.

(2000) 23 OSCB June 30, 2000 p 4501

Registrant Dealings With Clients

The CSA have requested comment on proposed National Instrument 33-102 Registrant Dealings with Clients and Companion Policy 33-102CP.

The proposed National Instrument replaces:

- Proposed National Instrument 33-102 Distribution of Securities at Financial Institutions
- Companion Policy 33-102CP
- Proposed National Instrument 33-103 Distribution Networks
- Proposed National Policy 33-201 Networking and Selling Arrangement Notices

- Proposed National Instrument 33-104 Selling Arrangements and Companion Policy 33-104CP.

The purpose of the Proposed National Instrument and Policy is to ensure that clients dealing with registrants are fully informed about the products they are trading or purchasing and the risks they face.

For more information, please call **Tracey Stern**, Legal Counsel, Market Regulation, (416) 593-8167.

(2000) 23 OSCB July 21, 2000 p.4983

MRRS For Exemptive Relief – Frequent Issues

CSA staff has issued a notice designed to improve current filing practices for Exemptive Relief Applications filed under the Mutual Reliance Review System (MRRS).

The Notice covers issues such as: requests for expedited treatment; the timeliness of applications; relief from the Financial Statement Filing Requirements; prefiling discussions; situations requiring more than one principal regulator; requests for confidentiality and applications for relief from the fee requirement.

For more information, please call **Margo Paul**, Manager, Corporate Finance, (416) 593-8136.

Any questions or comments from investment fund filers whose principal jurisdiction is the Ontario Securities Commission should contact **Paul Dempsey**, (416) 593-8118.

(2000) 23 OSCB August 11, 2000 p. 5508

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

Commission approves significant sanctions in RT Capital high closing case

At a hearing on July 20, 2000, the Ontario Securities Commission approved a settlement agreement entered between staff of the Commission and RT Capital Management Inc., K. Michael Edwards, Timothy K. Griffin, Donald E. Webster, Jennifer I. Lederman, Peter B. Larkin, Peter A. Rodrigues, Gary N. Baker, Patrick Shea and Marion Gillespie.

The respondents admitted that they acted in a manner contrary to the public interest. Specifically, RT Capital also admitted that it failed to establish written procedures for dealing with clients with respect to high-closings that conformed with prudent business practice and enabled RT Capital to serve its clients adequately.

The settlement approved by the Commission includes the following sanctions:

- RT Capital will make a payment of $3,000,000 to the Commission, to be allocated to such third parties as the Commission may determine for purposes that will benefit investors in Ontario;
- Edwards, Lederman, Rodrigues, Baker and Griffin agreed not to be, or act as, a director or officer of any market participant for varying periods of time ranging from one month to three years and in the case of Larkin permanently;
- Larkin's registration is terminated permanently;
- Baker's registration is suspended for a period of three years;
- Gillespie, Shea, and Baker cease trading in all securities, with limited exceptions, for varying periods of time ranging from one year to three years and in the case of Larkin permanently, again with limited exceptions;
- RT Capital, Edwards, Griffin, Webster, Lederman and Rodrigues are reprimanded;
- RT Capital is submitting to a review of its practices and procedures and will institute such changes as may be required;
- Baker, Shea and Gillespie are required to take courses prior to their registration being reinstated;
- Shea and Gillespie are required to work under close supervision for a period of two years upon their reinstatement;
- The respondents were to pay in total, a sum of $143,000 towards the Commission's cost of the investigation;
- RT Capital also agreed to re-configure its telephone taping system so that all calls between an RT Capital portfolio manager and an RT Capital order executioner are recorded.

Gordon-Daly Grenadier Securities

At a hearing on July 27, 2000, the Ontario Securities Commission approved a settlement agreement between Staff of the Commission and Gordon-Daly Grenadier Securities, David Bregman, Alan Greenberg, Oron Sternhill and Wangyal Tulotsang.

The Commission made an order:

i) that the registration of Gordon-Daly Grenadier Securities, David Bregman, Alan Greemberg, Oron Sternhill and Wangyal Tulotsang, the Respondents, be suspended or restricted for such time as the Commission may direct, or be terminated, or be subject to such terms and conditions as the Commission may order;
ii) that trading in securities by Gordon-Daly and the Respondents cease permanently or for such other period as specified by the Commission;
iii) the Respondents be prohibited from becoming or acting as a director or officer of any issuer;
iv) the Respondents be reprimanded;
v) the Respondents pay costs to the Commission; and/or
vi) such other order as the Commission considers appropriate.

Commission approves settlement with significant sanctions against Price Warner Securities Ltd., Ian Rolin and Lorne Rolin

On August 3, 2000, the Ontario Securities Commission approved a settlement between Staff of the Commission, Price Warner Securities, Ian Rolin and Lorne Rolin.

In the settlement the respondents admitted that during

the period from 1996 to 1999, Price Warner acquired stock for its own account in "Thirteen Issuers" trading on the Canadian Dealing Network, Inc., and re-sold that same stock to its clients at excessive mark-ups. In excess of 90% of Price Warner's revenue was earned from principal trading and derived from trading stock of the Thirteen Issuers. Price Warner's gross revenue (i.e., revenue from the sale of stock less acquisition costs) earned from principal trading with stock of the Thirteen Issuers was approximately $26.4 million.

In approving the settlement, the Commission noted Price Warner may have placed itself in a conflict of interest and that the firm's conduct was contrary to the public interest. The Commission also noted admissions by Ian Rolin and Lorne Rolin that by allowing Price Warner to engage in this conduct, each of these officers acted contrary to the public interest. The Commission further stated that it can be inferred on the basis of the facts admitted to in the settlement, that Price Warner may have breached Rule 31-505 of the *Securities Act* to deal fairly, honestly and in good faith with its clients.

The Commission reprimanded Price Warner, Ian Rolin and Lorne Rolin. Price Warner's registration was suspended effective 5:00 p.m. August 11, 2000 and was ordered to wind up its business. The Commission also imposed terms and conditions on Price Warner's registration, to ensure that the firm's affairs are wound up in an orderly manner, and in a way that will offer the best possible protection to clients of the firm. Prior to the close of business on August 11, 2000, Price Warner is required to return to clients cash and/or securities or transfer clients' securities and cash to a firm that is a member of the Investment Dealers Association of Canada.

By the terms of the Order, the registration of Ian Rolin is suspended for a period of fifteen years, and he is prohibited, for a period of fifteen years, from applying for registration in any capacity with the Commission, or for acting as an officer, director or promoter, or owning greater than 20% of a reporting issuer. Ian Rolin is prohibited for the rest of his life from being involved directly in the management of a registrant, and is prohibited for the rest of his life from owning, directly or indirectly, more than a 20% interest in any registered firm.

By the terms of the Order, the registration of Lorne Rolin is suspended for a period of seven years, and he is prohibited, for a period of seven years, from applying for registration in any capacity with the Commission, or for acting as an officer, director or promoter, or owning greater than 20% of a reporting issuer. Lorne Rolin is prohibited for a period of seven years from being involved directly in the management of a registrant, and from owning, directly or indirectly, more than a 20% interest in any registered firm.

The respondents were ordered to pay the sum of $25,000 to the Commission in respect of a portion of the Commission's costs of investigating the matter.

OSC commences proceedings against Philip Services Corp.

On August 30, 2000, the Ontario Securities Commission commenced proceedings against Philip Services Corp. and seven individuals, all former officers and/or directors of Philip. The individual respondents are: Allen Fracassi, Philip Fracassi, Marvin Bouhgton, Graham Hoey, Colin Soule, Robert Waxman and John Woodcroft.

Staff of the Commission alleged that with the individual respondents' authorization, Philip filed a prospectus in November 1997 that failed to provide full, true and plain disclosure of all material facts relating to the securities offered. It is also alleged that Philip and the individual respondents failed to disclose material facts relating to a restructuring charge, various financial transactions and issues relating to Robert Waxman, a former officer and director of Philip.

Patrick Joseph Kinlin

On September 20, 2000 the Commission ordered that trading in any securities by Patrick Joseph Kinlin cease permanently.

On July 4, 2000 the Staff of the Ontario Securities Commission issued a Notice of Hearing and Statement of Allegations against Patrick Joseph Kinlin. Staff alleged that Patrick Joseph Kinlin was the sole director of Kinlin Financial Services Incorporated. He was licensed in the Province of Ontario to sell life insurance, mutual funds and guaranteed investment certificates. He was not licensed to broker stocks or bonds.

Through an extensive network of social contacts and personal friends, he actively sought funds from private individuals to invest in the markets described, including those for which he was not licensed. He offered a wide range of financial services to his clients, including retirement planning, investment counselling, personal and business insurance, estate planning, and estate administration. Annual information statements were provided, purporting to provide his clients with a concise picture of their financial progress, and were statements upon which his clients relied to access their investment progress, and to assess it as well. Patrick Joseph Kinlin used his familiarity and access to his clients' affairs by preparing and filing their personal income tax returns, preparing wills that named him as the executor and often trustee of the estate, and by acquiring power of attorney. In this role, he often directly received cash funds from his clients, with the understanding that they would be invested in the clients' name and to their benefit.

A Provincial Warrant was obtained for the arrest of Patrick Joseph Kinlin in June of 1999. In August of 1999, the Canadian government commenced extradition proceedings for the return of Kinlin to face criminal charges. On September 9, 1999, he returned to Canada, and on September 10 he appeared in a Toronto court to face criminal charges.

On January 10, 2000, before the Honourable Mr. Justice Porter of the Ontario Court of Justice, Patrick Joseph Kinlin entered a plea of guilty to 28 counts of fraud over $5,000.00 contrary to the Criminal Code. Mr. Justice Porter accepted that plea, entered convictions and sentenced him to 5 years in prison. He was also ordered to make compensation in the amount of $12,582,820.75 to 63 separate individuals or couples, Kinlin's victims of frauds.

OSC applies sanctions against Clifford Paul Tindall
On August 30, 2000, the Ontario Securities Commission terminated the registration of Clifford Paul Tindall, former vice-president, and salesperson of the now defunct Fortune Financial. The Commission further ordered that Mr. Tindall cease trading in securities in Ontario for a period of seven years, except for trading in certain specified securities for his own account.

Commission Approves Settlement with respect to David Singh
On July 31, 2000 the Ontario Securities Commission approved a settlement agreement with respect to the allegations to David Singh, the former President of Fortune Financial Corporation. The proposed Settlement Agreement is as follows:

i) pursuant to clause 6 of subsection 127(1) of the Act, Singh will be reprimanded by the Commission;
ii) pursuant to clause 2 of subsection 127(1) of the Act, Singh will cease trading in securities for a period of five years from the date of approval of this settlement agreement with the exception of trading in personal accounts held in his name only;
iii) pursuant to clause 8 of subsection 127(1) of the Act, Singh is prohibited from becoming or acting as a director or officer of any issuer for a period of four years effective the date of the Order of the Commission approving the proposed settlement agreement herein, resigning from any such position within sixty days of the making of this order; and
iv) Singh will make a payment, within sixty days, of $25,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter forthwith.

Otis-Winston Ltd.
The Ontario Securities Commission issued a Notice of Hearing on June 7, 2000 to consider whether Otis-Winston Ltd. breached s. 25 of the Securities Act.

Staff of the Commission stated on the Statement of Allegations that:

- On May 3, 2000, Otis-Winston filed with SEDAR a Form 42 and an offer to purchase shares (the "Offering Document") announcing its intention to acquire up to 590,000 Xillix shares. This represents only 1.85% of the outstanding Xillix shares and is therefore not a take-over bid pursuant to the Act.
- The Offering Document states that Otis-Winston will deliver two Digital Cybernet shares for one Xillix Share. The Offering Document was not mailed to all Xillix shareholders. The Offering Document was delivered to the offices of the Canadian Depository for Securities ("CDS"), which prepared a Depository Bulletin describing the Offer and delivered the Bulletin to all Xillix shareholders.
- The Offering Document does not contain meaningful disclosure concerning Digital Cybernet shares. Accordingly, offering the Digital Cybernet common shares as consideration for tendering the Xillix common shares is contrary to the public interest.
- The valuation in respect of the Xillix shares, as described in the Offering Document, was prepared by De Rosa Accounting in Niagara Falls. Americo and Anita De Rosa are principal shareholders or former principal shareholders of Digital Cybernet or a related company. The valuation is not included in any material filed.
- The value of Digital Cybernet shares is not properly disclosed in the Offering Document.
- Digital Cybernet purported to become a reporting issuer on October 6, 1999. According to section 72(5) of the Act, the first trade in previously issued securities of a company that has ceased to be a private company, other then a further trade exempted under 72(1) of the Act, is a distribution except where, among other things, the issuer has been reporting issuer for at least twelve months. There has been no trades in the common shares of Digital Cybernet since October 6, 1999, which satisfy the provisions of section 72.
- Otis-Winston is not registered to trade in securities in Ontario, and therefore any transfer of Digital Cybernet common shares to Xillix shareholders, without the appropriate registration or exemption, has been or will be in breach of s.25 of the Act.

Koman Info-Link Inc., Koman Investment Inc., Simon Ko and Jose Castaneda
On June 7, 2000, the Ontario Securities Commission approved a settlement agreement entered between Staff of the Commission and Koman Info-Link Inc., Koman Investment Inc., and Simon Ko. The Commission also approved a settlement between Staff of the Commission and Jose Castaneda.

The Commission ordered that Koman, Koman Investments Inc., and Ko be prohibited from trading in securities permanently, and that Castaneda be prohibited from trading in securities for a period of five years. The Commission further ordered that Ko resign his position as the sole officer and director of Koman, and that he be prohibited from becoming or acting as a director or officer of any issuer for a period of fifteen years, except for any position he may hold as an officer of the issuer in his capacity as an individual providing architectural services. Under the terms of the settlement, Castaneda agreed not to apply for registration in any capacity under the Act for a period of fifteen years. The Commission also reprimanded Koman, Koman Investment Inc., Ko and Castaneda.

The Commission made an application before the Superior Court of Justice for an order appointing a receiver of all the property held in the name of Koman. On May 18, 2000, KPMG Inc. was appointed receiver of the property of Koman.

Noram Capital Management, Inc. and Andrew Willman
The Staff of the Ontario Securities Commission has issued a Notice of Hearing and Statement of Allegations against investment counsel portfolio manager Noram Capital Management, Inc. and Andrew Willman, Noram's President, Chief Executive Officer and Supervisory Procedures Officer. Currently, Noram's registration is suspended by Order of the Commission dated September 29, 1999.

Willman and Noram are alleged to have contravened the *Ontario Securities Act* by failing to deal fairly, honestly and in good faith with clients of Noram, over more than a seven year period. The conduct alleged includes making unsuitable investments, failing to adequately disclose the risks associated

with certain investments including leveraged investments, making misleading statements to clients regarding investments, making misleading and inaccurate representations in advertising and promotional materials, engaging in personal trading and principal trading and self-dealing. In addition, it is alleged that Noram, breached an Order of the Commission dated September 29, 1999, which suspended its registration effective October 7, 1999, by failing to provide the Commission with certain financial reporting documentation. Noram is currently suspended pursuant to this Order as it has not provided the Commission with documentation establishing that it has rectified its working capital deficiency. According to the Statement of Allegations, Willman, as Noram's Supervisory Procedures Officer, is responsible for ensuring that Noram fulfill its obligations as a registered advisor under the Ontario Securities law.

RECENT SPEECHES

David Brown, OSC Chair, Canadian Investor Relations Conference, Toronto, May 29, 2000

"There are many forces driving change (in the markets). Regulators and IR professionals both have responsibility for managing it. There are many steps to take to ensure that our regulatory structure, corporate governance policies, and accounting practices adjust to a market that is bigger, faster, more inclusive and more globalized. Let me suggest a few.

- **Managing change includes recognizing that mass participation in the market demands mass education in the nature of investment.**

When it comes to steering their portfolio, millions of people are moving from the passenger's seat to the driver's seat. They are entitled to some driver's ed. This means that today's regulator must also be an educator. The best-protected investor is a well-informed investor.

For this reason, the Ontario Securities Commission is creating a Fund for Investor Learning. It will have a clear mandate: To assist in raising the level of awareness of Canadians about financial matters, about saving, about debt and planning for retirement, and to raise awareness starting at a very early age. It will pursue these goals through research, community partnerships, symposia, and educational products and support.

Funding will come from monies collected through settlements in OSC enforcement proceedings. The Fund will be managed by a Board composed of representatives from the OSC, the financial services sector, and educational experts.

This is not going to be a top-down effort. The Fund will work through community partners, to ensure that the information is tailored to make the most direct impact on people.

- **Managing change includes reshaping our regulatory structure to reflect the changes in the financial services sector.**

When the regulated sectors are becoming increasingly intertwined, how long can the regulators remain separated? Ontario moved to address this question earlier this month, when the Minister of Finance announced in his budget that he would create a comprehensive financial services regulator, combining the Ontario Securities Commission with the insurance and pension regulator, the Financial Services Commission of Ontario.

The new entity will eliminate the mismatch between regulation and reality. A comprehensive financial services authority can ensure a consistent regulatory approach, eliminate public confusion as to who regulates what, offer one-window service for both consumers and providers, enhance the competitiveness of the financial services sector, and improve the overall investment climate.

Securities, insurance and pension regulators will no longer travel on different paths – no longer duplicating each other, no longer contradicting each other.

- **Managing change includes addressing the needs prompted by the growth of a large secondary market. In fact, this fundamental reorientation of market dynamics demands a number of changes to the way we regulate.**

First, it makes it increasingly important to mandate and monitor disclosure beyond the initial public offering. We have to ensure that all investors are included in the circle of disclosure.

You are in the business of ensuring close and positive relations between your companies and its shareholders. You know how important it is for investors to have confidence in your corporate decision-making process. You are intimately familiar with the growing demand for timely information.

"The Ontario Securities Commission is creating a Fund for Investor Learning. It will have a clear mandate: To assist in raising the level of awareness of Canadians about financial matters."

For these reasons, the Canadian Securities Administrators are finalizing the introduction of a national system of integrated disclosure. A concept proposal was published for comment in January.

Under a system of integrated disclosure, reporting issuers will be able to access the capital markets quickly, and at any time, by issuing a simple term sheet. There will be no restrictions on pre-marketing, and no expensive, time-consuming prerequisite to file a prospectus.

In return, issuers will be required to maintain a record of continuous disclosure to the market of prospectus-quality information about the company.

This will benefit both investors and issuers. Investors would be guaranteed a continuous flow of timely, high-quality information. Issuers would obtain faster, more flexible access to capital markets on the basis of a term sheet setting out only the details of the securities offered."

(New Economy.ca – A Risk-Reward Trade-off)

The creative destruction of jobs in the changing economy is a risk for workers employed in shrinking industries where measurement is established and accurate. In growing areas, it is much more difficult to track job growth, wage rates and the impact of stock options which may not be exercised for years and where benefit won't be known until execution.

While the apparent puzzle of strong spending growth and modest wage gains may be largely illusory, the productivity improvements are not. This creates substantial risks and uncertainty for policy. Are there hidden inflationary pressures that could generate a substantial acceleration in inflation? With the long lags involved in the impact of a policy change, current policy may be too easy. At the same time, reduced inflationary pressure from productivity improvement could extend this cycle for a number of years yet.

The changes in the capital markets are similarly dramatic and also still in their infancy. Will the explosion in volumes traded be sufficient to offset the drop in commissions and margins to allow current market structures to be maintained? Will global markets going forward more closely reflect the widely distributed model typified by the Electronic Communication Networks (ECNs) (and ECNs of ECNs) in the US, or the amalgamation of exchanges into mega-exchanges as is taking place in Europe and in the GEM project?

"Are there hidden inflationary pressures that could generate a substantial acceleration in inflation?"

Are discount brokers the wave of the future? Investors who require full brokerage services and advice (including, likely, a number of the people now using discount brokers) are still searching for a new model of most beneficial to them. The best way for investors to pay for this advice still isn't clear. Fee-based investment services have grown as rapidly, or more rapidly as discount broking at times.

Distribution structures may be entering into an era of unprecedented change with direct issuance of equities and debt competing with new intermediaries. How does this impact the traditional analytical function, both in terms of compensation and delivery?

The mutual fund industry is changing just as rapidly with new fund structures (pick your own stocks, vote for the fund instruments, passive sub-index trackers, etc.) emerging almost daily, putting pressure on margins and challenging investors. With information flow and opportunities for investing multiplying, both institutional and individual investors are facing the opportunities of improving their returns and the risks of moving out of established comfort zones.

Regulators face a similar ramp-up in both risk and reward. The increase in trading volume, transparency and new financial instruments is a strong net positive for market efficiency. That represents a challenge to rule-makers to ensure that market regulation is up-to-date and appropriate for changes that may not be visible yet. While the rise in ecommerce generates opportunities for the unscrupulous to prey on investors, frequently from offshore locations, it also provides new tools to detect market manipulation, fraud and other offences, limiting the damage in a way that hasn't been possible previously.

The increase in trading volume, transparency and new financial instruments is a strong net positive for market efficiency.

The successful introduction of the web marks the true beginning of the global information revolution and no sector is more dependent on information flow than the financial services, except perhaps the regulation of financial services. The central tenet of the risk-reward trade-off is more risk, more reward. This has certainly been revealed in the trading pattern of new economy stocks and will likely play out in the same way in the financial services industry. Our approach to setting rules for those services will have to be similarly dynamic.

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Information on the OSC, Investor Information,
Rules and Regulations, Enforcement Information
and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 3, Issue 4

FALL 2000

inside...

FEATURE

Statutory Civil Remedy for Investors in the Secondary Markets

The CSA has published amendments to the Provincial securities legislation that would give investors in the secondary markets the right to sue any public company and key related persons for making public misrepresentations about the company or for failing to make required timely disclosure. A number of the CSA members plan to recommend the amendments to their respective governments. At this time, however, none of the governments have made a decision to proceed with the amendments.

Scope of Remedy

The proposed legislative remedy would give secondary market investors a limited right of action against an issuer of securities, its directors, responsible senior officers, "influential persons" (such as large shareholders with influence over disclosure), auditors and other responsible experts. Investors would have the right to seek limited compensation for damages suffered at a time when the issuer had made, and not corrected, public disclosure (either written or oral) that contained an untrue statement of a material fact, or failed to make required material disclosure.

(continued on page 11)

INDEX

Perspectives welcomes letters to the Editor. Letters should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8

MERGERS AND ACQUISITIONS UPDATE

M&A Submissions to The Five-Year Review Committee

On August 11, 2000, the M&A Team at the Ontario Securities Commission made a written submission to the Securities Review Advisory Committee (the "Five-Year Review Committee") in response to the committee's request for comments regarding proposals for reform of Ontario's securities laws. (A copy of the M&A Team's full submission can be downloaded from the OSC's website, www.osc.gov.on.ca., where it is published with other comment letters submitted to the Five-Year Review Committee.)

Seventeen years have passed since the last comprehensive review of the provisions of the Securities Act (the "Act") relating to take-over bids and issuer bids. Although the legislation in this area generally has served Ontario capital markets well, the M&A Team identified a number of issues that merit further consideration.

The purpose of the submission was to identify these issues for the Five-Year Review Committee and recommend a path forward for their resolution.

In the submission, the issues were categorized as follows:

- issues where the M&A Team recommends legislative amendment;
- issues where legislative amendment would be required but which the M&A Team believes require further study before any such amendment is undertaken; and,
- issues for which there is adequate rule-making authority but that require further study and analysis before any rules are made.

Legislative Amendment Recommended

The M&A Team recommended that the Act be amended as follows:

- The provisions of the Act giving the OSC rule-making power should be amended to permit the OSC to vary the definition of "take-over bid" in the Act in order to permit the OSC to make rules in respect of offers to acquire less than 20% of the outstanding securities of a class. The purpose of this amendment would be to enable the OSC to make rules regulating mini-tenders and other broadly disseminated offers to acquire less than 20% of a class of securities, which is the current threshold for take-over bid regulation under the Act.
- The provisions of the Act giving the OSC rule-making power should be amended to permit the OSC to make rules in respect of offers to acquire securities that are convertible into voting or equity securities. The current application of the Act's take-over bid and issuer bid provisions to such securities could be clearer.

Further Study Required Before Any Legislative Amendment Is Undertaken

The M&A Team recommended that further study be conducted prior to undertaking any legislative changes in the following areas:

- The Commission des valeurs mobilières du Québec (the "CVMQ") had issued a notice stating that it would be asking the Canadian Securities Administrators (CSA) Take-over Bid Committee to consider whether the take-over bid provisions should be extended to transactions that are not structured as take-over bids but that achieve the same result, such as arrangements. A further notice was subsequently issued by the CVMQ on this subject. The M&A Team believes that this subject requires thoughtful and thorough analysis before any legislative amendment is undertaken.
- The adequacy of the powers and remedies available to the OSC, generally, to regulate M&A transactions is a subject that requires further analysis before legislative amendment is undertaken.

Further Study Required But Legislative Amendment Unnecessary As Adequate Rule-Making Authority Exists

There are a number of other issues concerning M&A transaction regulation that the M&A Team identified as requiring further consideration. To the extent that the study of these issues results in the need for regulatory reform, the M&A Team believes that such reform could be effected through the implementation of rules for which adequate rule-making authority currently exists.

Some of the issues discussed in the submission are summarized below:

- Certain bids made in accordance with foreign laws are exempt from regulation under the Act if the target company has very few Ontario shareholders or if they hold a very small percentage of its shares. Should this "de minimis threshold" in the Act exempting foreign bids from the application of the Act be increased, and if so, to what level?
- Is the OSC's policy on defensive tactics, including its approach to shareholder rights plans (or poison pills), appropriate, and if not, what changes should be made?
- Is additional regulation necessary in respect of communications made in the context of M&A transactions, and if so, what form should that regulation take?
- Are the time frames and methods for delivery of disclosure documents in the context of M&A transactions appropriate, and if not, what changes should be made?
- Do the provisions relating to a prospective bidder's accumulation of a target company's shares prior to public announcement of the transaction require revision, and if so, what form should that revision take?
- Is additional public disclosure necessary in respect of agreements or arrangements that affect control of an issuer or contain provisions that have material consequences in the event of a change of control?

- Is greater precision desirable in respect of the disclosure required in M&A transactions where shares are being issued?
- A bidder that makes a formal cash bid is required to have "adequate financing arrangements" in place prior to the commencement of the bid. Is there a need to clarify this requirement and, if so, how should it be clarified?
- Is there a need to regulate the types of conditions to which a bid may be subject?
- Should the OSC codify certain kinds of routinely-granted discretionary exemptions from the formal bid requirements?

The M&A Team recognized that the submission raised a number of issues that may be beyond the scope of the Five Year Review Committee's agenda. The issues were raised, nevertheless, for the Five Year Review Committee to consider as it saw fit. A path forward for the Five Year Review Committee might be to focus on those two issues for which the M&A Team has recommended legislative amendments, while leaving the other issues for separate study and analysis. The M&A Team believes that such a separate study and analysis ultimately should be undertaken to ensure that Ontario's regulation of M&A transactions meets only one standard - the standard of excellence.

The M&A Team noted that a number of the issues raised in the Five Year Review Committee's request for comments dealt with the globalization theme and, in the M&A Team's view, appropriately so. If Ontario is to gain its fair share of invested global capital it must have securities regulation that is, and is perceived to be, investor-friendly on a global comparative basis. In order to attract and retain issuers, such regulation also must be as issuer-friendly as possible. The M&A Team indicated that, although balancing these sometimes conflicting objectives can be difficult, it is imperative that such a balance be achieved as part of the five-year review process and on an ongoing basis.

The M&A Team also noted that, although the Canadian capital markets are relatively sophisticated, they also are relatively small. From a global perspective, issuers and investors will avoid the Canadian capital markets if the cost of compliance with securities regulation outweighs the benefits. The M&A Team recognizes this and works closely with its colleagues in other CSA jurisdictions in an effort to ensure that the securities regulation of M&A transactions in Canada is as seamless as possible. Accordingly, to the extent Ontario reform is undertaken in the securities regulation of M&A transactions, it would be necessary to seek to have such changes made nationally.

For more information, please call any of the following members of the M&A Team: **Janet Holmes**, Senior Legal Counsel, (416) 593-8282; **Terry Moore**, Legal Counsel, (416) 593-8133; or **Naizam Kanji**, Legal Counsel, (416) 593-8060.

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Rules and Policies

The following Rules and Policies were delivered to the Minister of Finance. If the Minister does not approve or reject the Rule or return the Rule for further consideration, or if the Minister approves the Rule, it will come into effect on the date indicated.

General Prospectus Requirements

OSC Rule 41-501, Form 41-501F1 Information Required In a Prospectus, Form 41-501F2 Authorization of Indirect Collection of Personal Information, Form 41-501F3 Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process, Form 41-501F4 Non-Issuer Form of Submission to Jurisdiction and Appointment of Agent for Service of Process, and Companion Policy 41-501CP

Effective date: December 31, 2000

The Rule consolidates various provisions currently set forth in the Regulation to the Act and in various policy statements and notices and in the Commission Staff Corporate Finance Accountants Practice Manual concerning the preparation, certification, filing and receipting of preliminary prospectuses and prospectuses. The Rule prescribes the use of Form 41-501F1 as the form of prospectus to be used by issuers that currently file long form prospectuses using Forms 12, 13 or 14 of the Regulation.

Non Resident Advisers

OSC Rule 35-502

Effective date: November 18, 2000.

The Rule provides certain exemptions from section 25 of the Act for non-resident persons or companies regarding their advisory activities in Ontario, where the public interest doesn't require registration. The Rule also provides certain non-resident persons or companies with exemptions from certain requirements applicable to applicants for registration or registrants in the category of international investor (investment counsel, investment counsel and portfolio manager or securities advisor).

Prospectus Disclosure Requirements

National Instrument 41-101

Effective date: December 31, 2000

The Instrument consolidates the prospectus disclosure requirements currently set forth in National Policy Statement No. 12 Disclosure of "Market Out" Clauses in Underwriting Agreements in Prospectuses, National Policy Statement No. 13 Disclaimer Clause on Prospectus, National Policy Statement No. 32 Prospectus Warning Re: Scope of Distribution, and National Policy Statement No. 35 Purchaser's Statutory Rights, as well as similar prospectus disclosure requirements in the securities legislation of certain provinces.

Short Form Prospectus Distributions
National Instrument 44-101, Forms 44-101F1, 44-102F2 and 44-101F3 and Companion Policy 44-101CP
Proposed effective date: December 31, 2000

The Instrument prescribes conditions for the use of a short form prospectus to distribute securities to the public. It replaces National Policy Statement No. 47 Prompt Offering Qualification System, which has governed the use of a short form prospectus in CSA jurisdictions other than Quebec since 1993.

AIF and MD&A
OSC Rule 51-501 and Companion Policy 51-501 CP
Proposed effective date: January 1, 2001

The Rule reformulates Policy 5.10 Annual Information Form and Management's Discussion and Analysis of Financial Condition and Result of Operations, which has been rescinded effective May 31, 2001. The Rule also introduces a requirement for MD&A to be provided in relation to interim financial statements.

Financial Statements
OSC Rule 52-501 and Companion Policy 52-501 CP

The Rule reformulates section 7 to 11 of the Regulations to the Act which set out the content requirements of interim and annual financial statements.

Exempt Distributions

In order to make the regulation of the exempt market consistent with the needs of that market and its investors, the Commission has published a proposed rule on Exempt Distributions that would introduce several new registration and prospectus exemptions for small business financings.

The new exemptions are:

The Closely-Held Issuer Exemption – permits issuers to raise a total of $3.0 million, through any number of financings, up to 35 investors (excluding employees who acquire securities under a compensation or incentive plan).

The Family Member Exemption – allows issuers to issue securities on an exempt basis to spouses, parents, grandparents or children of its officers, directors and promoters.

The Accredited Investor Exemption – permits issuers to raise any amount at any time from any person or company that meets specified qualification criteria.

For more information, please call **Margo Paul**, Manager, Corporate Finance Branch, (416) 593-8136, **Iva Vranic**, Manager, Corporate Finance Branch, (416) 593-8115, or **James McVicar**, Legal Counsel, Corporate Finance Branch, (416) 593-8154.

September 8 (2000) 23 OSCB page 6205

Communication with Beneficial Securities Owners

The CSA have proposed changes to a Proposed National Instrument 54-101 on Communication with Beneficial Owners of Securities of a Reporting Issuer. This is the third draft of the proposed National Instrument and Companion Policy. They continue, with some changes, the regulatory regime currently embodied in National Policy Statement No. 41, which the instruments will replace.

For more information, please call **Robert F. Kohl**, Senior Legal Counsel, Corporate Finance, (416) 593-8233.

Sept. 1 (2000) 23 OSCB page 5937

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

Review of Revenue Recognition Practices

The OSC has launched a review of revenue recognition practices used by Canadian public companies.

The review by the OSC's Continuous Disclosure Team aims to identify whether the accounting practices adopted by Canadian issuers for recognizing, measuring and disclosing revenue reflect an appropriate application of the standards set out in the Canadian Institute of Chartered Accountant's Handbook and other generally accepted accounting principles.

In a letter sent to a sample of approximately 70 Canadian companies, the OSC has asked for a detailed explanation of how the company applies revenue recognition policies in its financial statements. Staff has asked that the material should include the following information:

- for revenue recognition on the sale of goods, an explanation of how the company deals with retained risks or obligations; including a customer's right of return, obligations under maintenance contracts, or obligations to provide complimentary upgrades;
- a description of how revenue is accrued for service contracts;
- whether any portion of the Company's reported revenue represents the "gross" amount of sales transactions in which the Company acts essentially as an agent or broker rather than as principal and for which it is compensated on a commission or fee basis;
- whether, and if so how, the Company compares its revenue recognition accounting practices with those applied generally within the industry in which it operates or by specific companies within that industry. The revenue recognition project is part of the Continuous Disclosure

Team's comprehensive review of selected accounting and disclosure practices.

The Commission plans to issue a summary of its findings and recommendations early next year.

For more information, please call **John Hughes**, Manager, Continuous Disclosure, (416) 593-3695 or **Irene Tsatsos**, Sr. Accountant, Continuous Disclosure, (416) 593-8223.

OSC/CARP Conference Series

To better equip seniors with information about the changing marketplace and regulatory environment, the Commission recently partnered with the Canadian Association of Retired Persons (CARP) to offer a series of conferences in seven communities across Ontario. With a membership of over 250,000 in Ontario, CARP's mandate is to effectively promote the rights and quality of life of mature Canadians.

Conference seminars highlighted the fundamentals of investor protection. Conference participants learned more about regulatory safeguards (from simplified disclosure to the planned merger between the OSC and Financial Services Commission of Ontario (FSCO)). Later, the audience was alerted to the telltale signs – or RED FLAGS – of investment fraud. At which time participants were appraised of practical ways to handle situations where they may be targeted by investment con-artists. Local law enforcement officers were on-hand to address other types of fraud and scams and how seniors can protect themselves and their money.

Among the OSC's Investor Education Programs, Investor Outreach has been targeted for expansion.

For More information please call **Alicia Ferdinand**, Investor Education Officer (416) 593-8307or to receive additional material on investing please call (416) 593-8314.

Canadian Venture Exchange Exemption From Recognition

Material relating to the Canadian Venture Exchange's (CDNX) application for exemption from recognition as a stock exchange in Ontario have been published in the OSC Bulletin (September 1, 2000 edition). These include an order granting CDNX a temporary exemption from recognition, and a proposed final order exempting CDNX from recognition.

CDNX is a recognized exchange in Alberta and British Columbia. Staff of the Alberta Securities Commission, the British Columbia Securities Commission and the OSC have developed a Memorandum of Understanding regarding oversight of CDNX. As lead regulators, the ASC and BCSC would have an obligation to report to the OSC on their oversight activities quarterly as well as annually to the CSA Chairs.

"All CDNX issuers must determine whether they meet the significant connection test by June 30, 2001."

Since CDNX issuers are likely to have many Ontario investors, the proposed Order maintains some of the investor protections that go with Ontario reporting issuer status, such as the continuous disclosure requirements. As well, CDNX has proposed rules and provisions that would require each CDNX listed issuer with a "significant connection" to Ontario to become a reporting issuer in Ontario. The amendments will take place June 30, 2001.

All CDNX issuers must determine whether they meet the significant connection test by June 30, 2001. If an issuer does, it must promptly apply to be deemed a reporting issuer in Ontario and must achieve that status within six months of June 30. On an ongoing basis, all CDNX issuers must assess annually whether they meet the test, and if so, must become Ontario reporting issuers.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257, **Margo Paul**, Manager, Corp. Finance, (416) 593-8136, **Jennifer Elliott**, Legal Counsel, Market Regulation, (416) 593-8109.

Sept. 1 (2000) 23 OSCB page 5884

Stock Swap Scam

The OSC is warning investors about a two-stage stock scam involving worthless stock, "swaps" and salespeople claiming to represent legitimate US companies.

Stage One:

- An investor is solicited by someone purporting to work for a brokerage house, offering an incredible deal on a stock described as a once in a lifetime investment – usually a US-based micro-cap stock worth fractions of a cent.
- The brokerage house, holding a large block of the stock, actively promotes it to drive the price up. Once a number of investors have overpaid for the stock, the brokerage house ceases to support the market for the stock and the stock's value falls dramatically.
- When the victim tries to contact the brokerage or the company, the brokerage house no longer exists and the issuer refuses to answer questions. The investor is left holding worthless stock for which there is apparently no demand.

Stage Two:
The investor is victimized again if he or she is duped into the second stage of the scam.

- The investor receives another solicitation from someone posing as a sales representative of a legitimate sounding company. In a recent scam, a person lied to the victim by claiming that he worked for Money Concepts Capital Corporation, a bona fide corporation.

"The sales representative proposed that the victim swap the worthless stock for blue chip stocks."

- The sales representative told the victim that he represented a group of clients who had heavy tax burdens and who wished to acquire stocks that had recently declined, supposedly enabling the clients to claim capital losses against capital gains. The sales representative proposed that the victim swap the worthless stock for blue chip stocks, valuing the victim's stocks at the price the victim paid.
- However, since a block of the blue chip stock was priced higher than the value of the victim's micro-cap stock, the victim was required to pay an amount of money to cover the difference. The victim in one case sent a check to an account at a New York branch of the HSBC Bank where the suspect held an account. The victim did not receive the blue chip stock – and thus was swindled again.

For more information, please call **Rowena McDougall**, Senior Communications Officer, (416) 593-8117.

Sept. 15 (2000) 23 OSCB page 6359

Temporary Exemption of ME from Recognition

The OSC is currently reviewing the Montreal Exchange's (ME) formal application to be recognized as an exchange under s.21 of the Act and s.15 of the *Commodity Futures Act*. In order to allow the ME to carry on business in Ontario, on September 26, 2000 the Commission granted a temporary exemption from the requirement to be recognized.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257, or **Jennifer Elliott**, Legal Counsel, Market Regulation (416) 593-8109.

October 6 (2000) 23 OSCB page 6862

Going Final by Year-end

As in previous years, Commission staff have advised that there can be no assurance that the review of a long-form prospectus will be completed and the necessary receipt issued before December 31, 2000 if the preliminary prospectus has not been filed on or before November 1, 2000.

Similarly, preliminary prospectuses filed for a new mutual fund should have been filed before November 1, 2000 to receive receipt before year end. Pro forma prospectuses for existing mutual funds must be filed within the time periods set by securities legislation.

For more information, please call **Paul Dempsey**, Assistant Manager/Senior Legal Counsel, Investment Funds, Capital Markets, (416) 593-8091, **Margo Paul**, Manager, Corporate Finance, (416) 593-8136, or **Iva Vranic**, Manager, Corporate Finance, (416) 593-8115.

October 13, (2000) 23 OSCB page 6894

Recognition of Certain Exchanges

Every purchase or sale of a security made by a registered dealer must be reported to the designated trade reporting facility (the Canadian Unlisted Board – CUB), except trades made through a Canadian stock exchange or a stock exchange or organized market recognized by the Commission.

On October 6, the Commission announced its recognition of the following for the purpose of excluding trades from these trade reporting requirements: NASDAQ; the International Stock Exchange of the United Kingdom and the Republic of Ireland Limited; and all stock exchanges outside of Canada that require participants to report details of transactions and publish details.

October 13 (2000) 23 OSCB page 6985

Investor Alert - Prime Bank Investment Schemes

The OSC and the RCMP have issued a warning to investors about legitimate sounding offers like Prime Bank Notes and Prime Bank Debentures used as a means to lure individuals into illegal investment scams.

In particular the OSC and the RCMP are warning investors of the following:

The use of official sounding terms, such as Prime Bank Notes, Prime Bank Debentures or Roll-Over Programs. These instruments typically take the form of notes, debentures, letters of credit, bank purchase orders, zero coupon bonds, or guarantees. The word "Prime" is meant to refer, generically, to reputable financial institutions (i.e., world banks) who supposedly issue these investments. These schemes sometimes claim affiliations with major international organizations, like the International Chamber of Commerce (ICC) and International Monetary Fund (IMF). Both these organizations deny having any association with these types of international investment programs.

Persons promoting these schemes lead prospective investors to believe that they are being allowed to participate in an otherwise secret trading regime. Investors might be required to sign non-disclosure and non-circumvention agreements which prevent them from disclosing to any persons the identity of the parties involved in the investment programs and the terms of the transactions. Often some part of the schemes would be transacted through a country regarded as a secrecy haven. This "offshore secrecy" feature conceivably enables investors to avoid paying any taxes on proposed investment returns.

Promises made to investors of above average returns or guarantees of unrealistic rates of return within a short period of time (e.g. 20% return per month), completely risk free.

Legal-looking documents which often use technical language are used in an attempt to confuse investors into believing their investments are worthwhile. They may make reference to trading programs, like a forfaiting program (also called forfeiting program), high yield cash trading program, or high yield investment program (HYIP). Little or no information is provided to investors about the specifics of the prospective trading programs utilized (i.e. how investors returns are generated).

Monetary rewards are provided to investors already involved in the schemes to encourage them to induce others to invest. Many individuals brought into these schemes are relatives or friends of the initial investors and as such, are less sceptical of the investments because they trust the family members/friends who made the referrals.

The OSC and the RCMP would like to remind investors that when in doubt about the legitimacy of a proposed investment, one can usually rely on the basic principle of investing: If it sounds too good to be true, it probably is!

Anyone solicited to invest in a prime bank investment scheme, or anyone having information about this or a similar scheme, should contact the Commercial Crime Section of their local RCMP division and the OSC or their local securities regulatory authority.

For more information, please call **Rowena McDougall**, Senior Communications Officer, (416) 593-8117.

Exemptive Relief and Year-end

All applications for exemptive relief for the period preceding year-end should have been filed before November 10, 2000 or November 30, 2000 in the case of applications relating to takeover bids, if exemptive relief is required before December 31, 2000. While every effort will be made to meet reasonable deadlines, if the application is filed after this date there is no assurance that the application will be reviewed or the necessary relief provided before year-end.

For more information, please call **Margo Paul**, Manager Corporate Finance, at (416) 593-8136 or **Iva Vranic**, Manager Corporate Finance, (416) 593-8115.

Oct. 20 (2000) 23 OSCB page 7086

Commissioners Update

John (Jack) Geller has been named a part-time Commissioner effective of Nov. 1, 2000. Mr. Geller resigned as vice chair of the OSC on Oct. 31, 2000 a position he has held since Nov. 1993. He acted as Interim Chair of the Commission from Nov. 1996 to April 1998.

Mr. Geller was appointed a Queen's Counsel in 1967, and was a Senior Partner at the law firm of Fasken Campbell Godfrey until 1993.

John (Jake) Howard and **Morley Carscallen** are retiring as Commissioners of the OSC. Mr. Carscallen has served since 1992, and was a vice-chair of the OSC from July 1996 to November 1998. Mr. Howard was appointed a Commissioner in 1996.

The OSC expresses its appreciation for the dedicated service of Mr. Carscallen and Mr. Howard.

Staff Update

Frank Switzer has been named Director of Communications. He leads the OSC's efforts in the areas of Public and Media Relations, Investor Education and public inquiries through the OSC Contact Centre.

Prior to joining the OSC, Mr. Switzer worked in corporate communications for a major infrastructure development company in the private sector. He also has experience in the public sector, serving as a communications advisor to a provincial Cabinet Minister and the Leader of the Official Opposition.

Randall Powley, an economist with 15 years experience in the capital markets, has joined the OSC as Chief Economist, a newly created position. For the past 11 years he has been forecasting the Canada/U.S. economies for a major investment dealer. Mr. Powley was the author of *New Economy.ca A Risk Reward Trade-Off* which appeared in the Summer 2000 edition of Perspectives.

George Gunn has been named Manager, Surveillance, Enforcement Branch. Mr Gunn joined the Commission in December 1992 as an investigator and held the positions of Lead Investigator and Senior Investigator before his appointment. Mr. Gunn was a member of the RCMP for twenty-two years mostly in the Commercial Crime Section where he specialized in stock market frauds before joining the OSC.

Michael Hubley has been appointed the Assistant Manager, Investigations in the Enforcement Branch. Mr. Hubley joined the OSC in 1997 after a 23-year career with the RCMP. When he left the RCMP, Mr. Hubley was in charge of the Stock Market and Securities Unit in Toronto.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is the organization of the securities regulators of the provinces and territories of Canada.

Proposals to Ease Transition to the MFDA

In order to help mutual fund dealers and their salespersons make a smooth transition to the MFDA, the proposed new self-regulatory organization for mutual fund dealers, the CSA is supporting proposed amendments to the MFDA draft by-laws.

The proposed amendments address a number of issues including: commission payments to unregistered corporations, bulk transfers, financial planning activities, the use of trade names, capital requirements and financial institutions bond coverage.

The proposed amendments were developed after extensive consultation with industry associations and direct meetings with mutual fund dealer representatives. They have been transmitted to the MFDA in a letter from Douglas M. Hyndman, Chair, Canadian Securities Administrators.

For more information, please call **Toni Ferrari**, Manager, Compliance, 416) 593 3692 or **Antoinette Leung**, Sr. Accountant, Compliance, (416) 593-8901.

October 27 (2000) 23 OSCB page 7241

SEDI Implementation Date Postponed

The proposed implementation date for the System for Electronic Disclosure by Insiders (SEDI) has been postponed from December 4 to Spring 2001.

In June, 2000, the Canadian Securities Administrators published for comment proposed National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI). SEDI will facilitate the filing and public dissemination of insider reports through an internet web site.

Some commentators had expressed concerns that the proposed implementation date would not provide SEDI issuers and their insiders with sufficient time to prepare for electronic filing. In addition, some system development delays have occurred.

In addition to issuing materials on SEDI, the CSA will hold industry information seminars in various centres to explain the SEDI filing system, and will distribute an information and registration package to all reporting issuers.

For more information, please call **Cynthia Rogers**, Legal Counsel, Corporate Finance, (416) 593-8261 or **Heidi Franken**, Accountant, Corporate Finance (416) 593-8249.

OSCB Nov 17, page 7757

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

OSC commences proceedings against Wayne S. Umetsu

The Ontario Securities Commission ("OSC") issued a Notice of Hearing and Statement of Allegations against Wayne S. Umetsu. Mr. Umetsu is alleged to have taken approximately $80,000 in funds given to him by a client for purposes of trading in commodity futures and used them for his own personal benefit. It is also alleged he traded in commodity futures without being registered to do so and/or held himself out to be registered to trade in commodity futures. Mr. Umetsu's conduct is alleged to be in contravention of Ontario commodity futures law and the public interest.

The OSC ordered the hearing in this matter to commence on March 19, 2001 or as soon thereafter as a panel can be convened.

Noram Capital Management, Inc. and Andrew Willman

On July 10, 2000, the OSC issued a Notice of Hearing and Statement of Allegations against investment counsel portfolio manager Noram Capital Management, Inc. and Andrew Willman, Noram's President, Chief Executive Officer and Supervisory Procedures Officer. The allegations are as follows:

a) Noram made several representations in a variety of promotional materials, to investors which were misleading and/or ambiguous and contrary to the public interest;

b) Between February 1993 and October 7, 1999, Noram and Willman failed to deal fairly, honestly and in good faith with clients of Noram, did not act in the best interests of clients and otherwise acted contrary to the public interest;

c) Noram had been deficient in meeting its minimum capital requirements in amounts ranging up to $948,909 which was alleged to be contrary to the public interest and contravened the Act and Regulations thereunder;

d) Noram failed to comply with terms and conditions imposed on its registration by the Commission which required Noram to file certain financial information with the Commission on a monthly basis.

The OSC ordered the hearing of this matter to commence on February 5, 2001 or as soon thereafter as a Commission panel can be convened.

Application by David McIntyre for recognition as an exempt purchaser

A hearing was held before the OSC on October 16, 2000 to consider an application made by David McIntyre for recognition as an exempt purchaser under paragraph 35(1) of the Securities Act and a ruling pursuant to section 74 of

the Act exempting trades to Mr. McIntyre from the prospectus requirements set out in section 53 of the Act. The Commission denied Mr. McIntyre's application.

If the application was granted by the Commission, trades to Mr. McIntyre would be exempt from both the registration and the prospectus requirements of the Act. Both the registration and the prospectus requirements are designed to protect investors by ensuring that, unless an appropriate exemption is available or the Commission grants a specific exemption, a prospective investor in securities will have available the benefit of the advice of a registrant with respect to a proposed investment, and the information available in a prospectus to enable the proposed investor to make an investment decision on the basis of all the relevant facts.

Mr. McIntyre asked us to craft a new general exemption from the registration and prospectus requirements of the Act, based on exemptions available in the United States. The Commission does not think that it is appropriate for such a general exemption to be crafted in the course of dealing with a particular application for recognition as an exempt purchaser or for an exemption from the prospectus requirements of the Act. But such an exemption, if appropriate, should be dealt with under the Commission's policy-making or rule-making authority.

Settlement agreement – Russell Millard

On November 13, 2000, the OSC approved a settlement entered into between staff of the Commission, and Russell Millard, a former mutual funds salesperson of CCI Capital Limited. The Commission ordered that:

1) the Settlement Agreement dated October 27, 2000 is hereby approved;

2) pursuant to clause 6 of subsection 127(1) of the Act, Russell Millard is hereby reprimanded;

3) pursuant to clause 1 of subsection 127(1) of the Act, the registration granted to Millard under the Ontario securities law will be suspended for a period of 21 days from the date of the Commission's Order.

Mark Bonham, StrategicNova Funds Management Inc. and Bonham & Co.

On November 6, 2000, the OSC approved a settlement agreement entered into between staff of the Commission and StrategicNova Funds Management Inc. A pre-trial conference will be held on or before December 31, 2000 with respect to proceedings against Mark Bonham and Bonham & Co., at which time a hearing date will be set.

The Commission made an order:

1) The Settlement Agreement dated November 6, 2000 in respect of StrategicNova is hereby approved;

2) StrategicNova will, on or before December 31, 2000, make a payment of $10,000.00 to the Commission as its contribution to the costs of the investigation and hearing of this matter;

3) StrategicNova will submit to a review of the valuation practices and procedures involving the Strategic Value Fund, Canadian Equity Value Fund and Dividend Fund. Such a review is to be performed by a third party (the "expert") approved by staff at StrategicNova's expense and will implement such reasonable changes as are recommended by the expert in a report within reasonable time frames set out by the expert after consultation with StrategicNova. StrategicNova will provide staff with a copy of the report and the recommendations of the expert and with progress reports concerning the implementation of the expert's recommendations;

4) StrategicNova will submit to a review of the manual prices used in the calculation of net asset value per share for any day during the period July 1, 1998 to September 30, 2000 inclusive on which manual pricing occurred in any relevant mutual fund.

5) If, as a result of the reviews set out in paragraphs (d) and (e), it is determined that the fund values and/or published results, communicated either to the public or to individual clients, were materially misstated, then StrategicNova will restate such fund values and make any required restitution to any relevant mutual fund; and

6) StrategicNova is hereby reprimanded.

Southwest Securities Inc.

On September 15, 2000, the OSC issued a Notice of Hearing and Statement of Allegations against Southwest Securities Inc.

Southwest is a Texas corporation that is a member of the New York Stock Exchange and the National Association of Securities Dealers. Southwest provides securities transaction processing services to dealers around the world, including Swift Trade Securities Inc., an Ontario securities dealer.

Staff of the Commission alleged that Southwest, which is not registered with the Commission, is engaging in activity that requires registration under Ontario securities law. Staff is seeking an order prohibiting Southwest from trading in securities in Ontario.

Application for registration of Joseph Curia denied

The decision of the Director was to refuse the request by Joseph Curia for reinstatement of his registration as a salesperson. The Director's reason was the applicant was previously employed as a salesperson at A.C. MacPherson Company Inc. from 1994 until 1999. On April 3, 2000, the Commission approved a settlement agreement, which among other sanctions, resulted in the winding up of MacPherson. The settlement was presented to the Commission for consideration as a result of high mark ups charged to its clients by MacPherson. In MacPherson and in other cases, the Commission has established that a principal sale by a dealer at excessive mark-ups is a breach of the duty a registrant owes to its client.

The Director found that registered salespeople owe a statutory duty to act fairly, honestly and in good faith with their clients. This duty requires a salesperson to be informed of the sales practices of the firm where he or she is employed. Where those practices involve high mark ups, a salesperson who participates in that practice will not be acting fairly or in good faith with his or her clients. Accordingly, his application for registration was denied.

Dual Capital Management Limited, Warren Lawrence Wall and Shirley Joan Wall

On October 30, 2000, the Honourable Judge J.J. Douglas of the Ontario Court of Justice sentenced Warren Lawrence Wall to a prison term for a total of 30 months (18 months in relation to the distribution of securities; and 12 months in relation to trading in securities, contrary to Ontario securities law), and Shirley Joan Wall to a prison term for a total of 22 months (13 months in relation to the distribution of securities; and 9 months in relation to trading in securities, contrary to Ontario securities law). A fine in the amount of $1,000,000 was imposed against Dual Capital Management Limited, the general partner of Dual Capital Limited Partnership. During the period from October 1994 to December 1996, Dual Capital Management Limited, Warren Wall and Joan Wall sold units in Dual Capital Limited Partnership to 49 investors residing throughout Ontario and raised funds in the amount of approximately U.S. $1,500,000. Warren Wall and Joan Wall are officers and directors of Dual Capital Management Limited.

In passing the sentence, the Hon. Judge J.J. Douglas stated the breaches of securities law at issue were at the heart of conduct the Ontario Securities Act seeks to prevent and should be punished accordingly. He further underscored the dishonesty and greed motive of Warren Wall and Joan Wall in the creation and operation of the investment scheme, as well as the vulnerability of the elderly investors from whom funds were solicited. After serving their prison terms, Warren and Joan Wall will be subject to a probation term of two years, requiring the Walls, among other things, to refrain from trading, distributing and promoting insurance products or securities.

RECENT SPEECHES

CLOSING THE CORPORATE CREDIBILITY GAP:

Building Market Confidence in a competitive World

by David A. Brown, Chair
Ontario Securities Commission

Insight Conference - Roundtable on Corporate Governance in Canada October 17, 2000

Are we helping our market participants compete globally? In other words, what are we doing to ensure that investors have reason to place confidence in Canadian listed companies?

- First, investor confidence depends on firm enforcement of securities regulation. We have to provide market participants with a continual reminder that failing to abide by the rules carries consequences. The OSC has dramatically increased the number of major investigations and enforcement initiatives. Less than halfway into our fiscal year, we have 270 cases on the go – almost twice as many as we had at the end of our 1997-98 fiscal year, the last period before we shifted to self-funding. The doubling of cases reflects a doubling of enforcement staff – from 40 to 80 in the past two years and the value of improved technology.

- Second, investor confidence depends on timely, quality disclosure in the secondary market. With the tremendous growth in retail investing – and the secondary market now accounting for 90 per cent of all securities transactions – it's crucial to mandate and monitor disclosure beyond the initial IPO.

"We anticipate that every Ontario issuer will be reviewed at least once every four years."

That's why the OSC has created a new Continuous Disclosure Team. We anticipate that every Ontario issuer will be reviewed at least once every four years. (Selection for review will be on a risk basis. Some issuers will be reviewed more often than that.) For each company selected, the Team will review and test the timely disclosure of all events in its recent history -- plus annual reports, website postings, and even public comments by senior officers. One of the team's first projects has been to review disclosure practices. Few companies seem to have safeguards against selective disclosure.

Late last year, we surveyed 400 companies. We found that three-quarters of them did not have written corporate disclosure policies --including almost half of those with market caps greater than half a billion dollars.

Regulatory Compliance for Financial Institutions

By Howard Wetston, Vice Chair
Ontario Securities Commission

The Canadian Institute
November 21, 2000

Rather than adhere to outmoded divisions between sectors, a more rationale division of regulatory authority would be based on the goals and objectives we wish to achieve. It makes more sense to base the regulatory division of responsibilities between two forms of regulation – prudential regulation and market regulation.

Prudential regulation is aimed at controlling risk in the financial system, and promoting its efficiency and soundness. As is the case with the federal Office of the Superintendent of Financial Institutions and the Federal Deposit Insurance Corporation, the goal of prudential regulation is to reduce the risk of an insolvency of a financial institution, and ensure that the insolvency of one institution does not cause other financial institutions to fail.

"Market regulation includes making sure that the capital markets and market participants operate in a way that is fair, transparent, and efficient"

Market regulation, on the other hand, is aimed at protecting consumers and maintaining the efficiency and integrity of the marketplace. That includes making sure that the capital markets and market participants operate in a way that is fair, transparent, and efficient, and that individual customers are protected from unfair, improper or fraudulent practices.

Market regulation includes requirements regarding disclosure about attributes of investments, issuers and conflicts of interest, and standards for industry professionals. It includes rules to protect customer funds and assets, and supervision of securities markets to ensure fair and efficient operations.

These characteristics of market regulation are intrinsic to both the OSC and the Financial Services Commission of Ontario. This common element forms one of the basic underpinnings of the reasoning behind merging the two agencies.

The new entity – the Ontario Financial Services Commission – will provide a regulatory structure based on the kind of regulation the financial service sector needs today, rather than the nature of a particular industry decades ago. It will facilitate the administration of market regulation without artificial walls or outdated barriers. It will eliminate the mismatch between regulation and reality.

(Statutory Civil Remedy for Investors)

Reliance
Investors would have the right to sue whether or not they had actually relied on the misrepresentation or the failure to make timely disclosure. This provision parallels the prospectus civil liability provisons. It is intended to remove the necessity to prove reliance in order to reflect the fact that parties may often suffer damage indirectly because of the effect a misrepresentation has on the market price of a security

Screening Mechanism and Court Approval of Settlement Agreements
To limit frivolous litigation or strike suits, plaintiffs would be required to obtain leave of the court to commence an action. In granting leave, the court would have to be satisfied that the action is being brought in good faith, and has a reasonable possibility of success. There would also be a requirement for court approval of any proposed settlement of an action.

"Investors would have the right to sue whether or not they had actually relied on the misrepresentation."

The proposed legislation arose out of the CSA's review and support of The Toronto Stock Exchange Committee on Corporate Disclosure (known as the Allen Committee) final report issued in 1997. The Allen Committee was established to review continuous disclosure by public companies in Canada and assess the adequacy of such disclosure. The Allen Committee was also asked to consider whether additional remedies should be available, either to regulators or to investors, if companies fail to observe the continuous disclosure rules.

Possible defences
The issuer and other potential defendants would have several possible defences. For some types of disclosure, the person has a defence if he or she conducted due diligence. For other types of disclosure, the person is not liable unless the plaintiff proves that the person knew about the misrepresentation in the document, deliberately avoided acquiring knowledge or was guilty of gross misconduct in making the statement containing the misrepresentation.

Limited exposure for issuers
The proposed legislation would limit the potential exposure of issuers and other potential defendants, depending on their category. For an issuer, the liability cap is set at the greater of $1 million or 5% of market capitalization. For potential defendants other than the issuer, the liability caps do not apply if the person "knowingly" made the misrepresentation or "knowingly" failed to make required timely disclosure.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245 or **Rossana Di Lieto**, Legal Counsel, (416) 593-8106.

November 3 (2000) 23 OSCB page 7383

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The OSC web site, www.osc.gov.on.ca includes:
Information on the OSC; Investor Information,
Rules and Regulations, Enforcement Information
and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 4, Issue 1

WINTER 2001

inside...

FEATURE

Financial Reporting in Canada's Capital Markets

The Canadian Securities Administrators recently released a Discussion Paper soliciting public comment on possible changes to the rules governing the accounting standards used for financial statements filed by reporting issuers in Canada's capital markets. The Discussion Paper asks whether it would be appropriate to relax the current rules to allow some or all Canadian and foreign reporting issuers to file in Canada using International Accounting Standards (IAS), U.S. GAAP and perhaps other bases of accounting, with limited or no reconciliation to Canadian GAAP

The growth of cross-border financing activity around the world has focused attention on impediments to issuers wishing to offer their securities or have them listed in another country. Differences in accounting standards have been identified as a significant impediment. The International Organization of Securities Commissions has been working with the International Accounting Standards Committee to

(continued on page 11)

INDEX

Perspectives welcomes letters to the Editor. Letters should be sent to The Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

MFDA – SRO Status

The Ontario Securities Commission has recognized the Mutual Fund Dealers Association of Canada as a self-regulatory organization for mutual fund dealers carrying on business in Ontario.

The terms and conditions under which the OSC recognized the MFDA are provided in the February 16 edition of the the OSC Bulletin. The British Columbia and Saskatchewan Securities Commissions also recognized the MFDA on the same terms and conditions.

The OSC also approved a rule that will require all mutual fund dealers registered in Ontario to become members of the MFDA by July 2, 2002.

In Ontario, the rule will be in effect after government approval is obtained.

Similar rules have been, or will be introduced in other jurisdictions. Once the rules come into force, all registered mutual fund dealers in applicable jurisdictions will be required to prepare and submit an MFDA application for membership, together with the MFDA's prescribed fees by July 2, 2002.

For more information call **Rebecca Cowdery**, Manager, Investment Funds, (416) 593-8129, or **Tamara Hauerstock**, Investment Funds, (416) 595-8915.

Proficiency Requirements

The OSC has passed a rule that requires individuals and firms engaged in financial planning to meet new proficiency standards that have been developed by a special CSA Committee. Subject to approval by the Minister of Finance, Multilateral Instrument 33-107 and related Forms will come into force on February 15, 2002.

"The proficiency standard includes passing the Financial Planning Proficiency Examination (FPPE)."

The Instrument applies to individuals and firms registered to trade or advise under securities laws. The Instrument requires individual registrants who hold themselves out under a variety of titles specified in the Instrument to satisfy an objectively determined proficiency standard. When used by securities registrants, these titles convey the impression that financial planning or similarly objective, comprehensive, integrated personal financial advice is offered.

Registered firms that use the restricted titles as business names or use a restricted service description are required to provide those advertised services, and to provide them through officers, employers or agents who meet the proficiency standards.

The same restrictions apply to titles and service descriptions used by licensed insurance agents and agencies.

Proficiency Standard

The proficiency standard created by the Instrument consists of:

- Passing the Financial Planning Proficiency Examination (FPPE) sponsored by the CSA and insurance regulators;
- Two years of insurance or securities industry experience in the last five years; and
- Commitment to an approved continuing education program.

Individuals who have completed one of the financial planning education programs or testing processes specified in the Instrument, or who enroll in a specified program before March 31, 2001 and in most cases complete it no later than March 31, 2003, will not need to write the FPPE. This grandfathering relief will expire on March 31, 2004.

The Instrument and the Forms have been, or are proposed to be adopted in certain CSA jurisdictions including Ontario, Nova Scotia, and Saskatchewan. A comprehensive regulatory regime governing financial planning came into effect in Quebec in 1999 as part of a larger regime governing professionals in the province.

For more information, please call **Julia Dublin**, Chair, CSA Committee on Financial Planning, (416) 593-8103.

February 16 (2001) 24 OSCB p. 1107

Amendments to Mutual Fund Rules

Amended National Instrument 81-101 Mutual Fund Prospectus Disclosure (NI 81-101) and National Instrument 81-102 Mutual Funds (NI 81-102) will:

- Permit index mutual funds to better achieve their investment objectives by allowing them to track their target indices without concentration limits, provided certain notice and disclosure requirements are adhered to; and

- Allow mutual funds to enter into securities lending, repurchase and reverse repurchase transactions on a basis that the CSA believe is appropriate to both ensure investor protection and permit mutual funds to realize the potential benefits of these transactions for their securityholders, provided certain notice and disclosure requirements are adhered to.

For more information, please call **Chantal Mainville**, Investment Funds, (416) 593-8168, or **Darren McKall**, Investment Funds, (416) 593-8118

The Minister of Finance Has Approved the Following:

Registration for US Broker-Dealers and Agents
National Instrument 35-101
Effective date: January 1, 2001

The National Instrument provides US broker-dealers and their agents with a conditional exemption from the applicable registration and prospectus requirements under Canadian securities legislation. The exemption facilitates certain cross-border trading in foreign securities between US broker-dealers and their clients from the US who are in Canadian jurisdiction.

Short Form Prospectus Distributions
National Instrument 44-101
Effective Date: December 31, 2000

The OSC published the final National Instrument, Companion Policy and Forms in a Special Supplement to the December 22, 2000 OSC Bulletin (2000) 23 OSCB.

Prospectus Disclosure in Certain Information Circulars
Rule 54-501
Effective date: December 31, 2000

The final Rule was published in the December 22 OSC Bulletin, (2000) 23 OSCB.

Standards of Disclosure for Mineral Projects
National Instrument 43-101
Effective date: February 1, 2001

The Commission published the National Instrument, Companion Policy and Form in the January 12, 2001 OSC Bulletin (2001) 24 OSCB.

REQUEST FOR COMMENT

Direct Purchase Plans

The OSC requested comment (comment period ended on February 16) on proposed Rule 32-501, which will permit reporting issuers to establish direct purchase plans in Ontario. Direct purchase plans would enable an issuer to issue securities directly to investors without selling them through a registrant.

Direct purchase plans are popular in the US, with over 1600 listed on a leading website about these plans. The OSC believes there is no compelling regulatory reason to prevent the establishment and development of plans in Ontario similar to those in the US.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8259 or **Barbara Fydell**, Legal Counsel, Market Regulation, (416) 593-8253.

November 17 (2000) 23 OSCB p. 7867

Reporting Issuer Defaults

The OSC has issued for comment a policy on how it determines that a reporting issuer is in default, amongst other related matters.

Proposed Policy 51-601 specifies that, even if financial statements have been filed by an issuer within the prescribed time period, the issuer will be considered to be in default if significant deficiencies are identified in those financial statements or in the issuer's continuous disclosure record. Under certain circumstances, this determination might be made before a Commission hearing has been held on the matter. Such a determination would be made only after the reporting issuer has been given an opportunity to discuss its views and remedy the deficiencies.

"Even if financial statements have been filed within the prescribed time period, the issuer will be considered to be in default if significant deficiencies are identified."

To be placed in default carries numerous potential consequences for a reporting issuer, including the possibility of a cease trade order and the inability to file a short form prospectus.

In general, the proposed policy outlines the guidelines followed and factors considered by the Commission in determining whether a reporting issuer is in default, as well as how a list of defaulting reporting issuers is maintained, and the procedure for obtaining a certificate of no default.

For more information please contact **John Hughes**, Continuous Disclosure, (416) 593-3695 or **Irene Tsatsos**, Continuous Disclosure (416) 593-8223.

OSCB December 8, 2000, p. 8246

Junior Natural Resource Issuers

The Commission is seeking comment on its preliminary decision to allow OSC Policy Statement No 5.2 – *Junior Natural Resource Issuers* to expire on July 1, 2001.

The Policy regulates the financing and, to some extent, the

operations of non-TSE listed junior natural resource reporting issuers in Ontario. It does not regulate technical reporting and disclosure, the focus of the new National Instrument 43-101, which upgrades the requirements in these areas.

The Commission's preliminary decision is based on the following factors:

- As a result of Canada's exchange restructuring, junior natural resource issuers are now primarily listed on CDNX, which has broadly equivalent regulation to that contained in Policy 5.2;
- As an Ontario-only policy, Policy 5.2 is inconsistent with the CSA's objective to establish consistent regulation; and
- The Small Business Task Force recommended that financing requirements and regulatory regimes not be industry specific.

For more information, please call **Rick Whiler**, Senior Accountant, Corporate Finance Branch, (416) 593-8127.

OSCB January 5, p. 115

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

New Appointments

Paul M. Moore has been appointed by Order-In-Council as one of the OSC's two Vice Chairs.

Prior to his appointment, Mr. Moore was a partner in the Toronto office of Torys. He practiced with Torys for the past 34 years in the areas of derivatives, securities, banking and trust, corporate/commercial, pension and insurance law and was head of the firm's Derivatives Practice Group.

Mr. Moore has extensive experience in all aspects of the financial institution and financial services industries and has had extensive interaction with stock exchanges and regulatory authorities for securities and banking.

The appointment is for five years.

Ralph Shay has been named Director, Take-over bids, Mergers and Acquisitions. He brings to the position over 20 years of experience in the securities field, first with the Toronto Stock Exchange where he was Vice President, Company Listings and Regulation, and then as a securities lawyer with the national law firm of Fraser Milner Casgrain. His responsibilities at the TSE included, among other things, adjudicating disputes relating to contested take-over bids and other contentious matters, and representing the TSE as counsel at hearings before the OSC.

Mr. Shay speaks frequently at industry and academic conferences on securities law and corporate governance, and is the author of a number of published papers in these areas.

Initial Report on Review of Revenue Recognition

Staff of the Continuous Disclosure team of the Corporate Finance Branch has recently issued an ***Initial Report on Staff's Review of Revenue Recognition Practices*** *(OSC Staff Notice 52-701).*

The notice reports Staff's preliminary findings and comments arising from its review of current practices used by a sample of 75 Canadian reporting issuers when recognizing, measuring, presenting and disclosing revenue.

"Five percent of the issuers provided sufficient information in response to staff's questions."

Staff's choice of revenue recognition as the subject for its earnings management review was influenced by numerous factors. Clearly, revenue is a highly significant element of financial reporting because of its direct effect on reported earnings. In addition, some users of financial statements are placing increased emphasis on revenue growth as a key indicator of value and performance, particularly for companies in the technology sector. Canadian accounting standards set out the principles governing recognition of revenue of all types but provide relatively little detailed and specific guidance on how those principles should be applied in specific circumstances. Various factors in the current business environment raise questions as to whether revenue recognition practices reflect a rigorous application of the relevant standards.

Of the 75 issuers included in the review:

- 5% of the issuers provided sufficient information in response to Staff's questions and did not generate any follow-up questions;
- 35% of the responses generated follow-up questions or comments on disclosure issues only; and
- 60% of the responses generated follow-up questions on recognition, measurement or presentation issues.

The issues raised by Staff are summarized in the notice and are typical of matters that will be questioned by staff on an ongoing basis as part of the continuous disclosure review program.

Initial results of the review suggest a need for significant improvement in the nature and extent of disclosure in both the financial statements and Management's Discussion and Analysis (MD&A). Staff have also identified certain situations they are investigating to determine whether particular revenue recognition, measurement and presentation practices reflect an appropriate application of the relevant standards.

As outlined in the report, it is staff's view that, although more specific guidance may be useful in Canada on certain matters, the guidance that is available in the US and elsewhere (such as in the SEC's Staff Accounting Bulletin (SAB) 101) is not being adequately considered by all issuers. This view was previously expressed in an article published in the Spring

2000 issue of OSC *Perspectives*. The notice elaborates in some respects on this view.

Staff continues to correspond with issuers on many of the specific issues identified in the notice, and will issue a final report following the resolution of all matters. Where issues have been identified for follow up and an issuer files a prospectus, staff will ask the issuer to address and resolve these matters prior to the receipt being issued.

For further information on staff's review, please call **John Hughes**, Manager, Continuous Disclosure at 416-593-3695, or **Irene Tsatsos**, Senior Accountant at 416-593-8223.

The Fourth Annual Investor Education Campaign

Each spring, the CSA implements a cross-Canada public awareness campaign which emphasises the importance of investor education and promotes the educational resources available from Canadian securities regulators and their partners.

The objectives of the campaign are to promote financial literacy, and the use of reliable educational tools and resources available to assist the investing public. This year's campaign urges Canadians to 'Invest Time Before You Invest', and encourages individual investors to practice a form of personal 'due diligence' on their advisers, investments and reliable sources of information.

Two cross-Canada initiatives are planned with community newspapers and youth broadcasts. CSA members will undertake a fuller slate of initiatives – based on local priorities – as part of their regional campaigns.

In Ontario, a number of regional initiatives are planned.

Preliminary Schedule of Events:

April 24
- TSE Investor Forum - Stock Market Place (Toronto)
- "Investment Risk – What Every Investor Needs to Know" Seminar (Toronto)
- "Protect Yourself from Investment Scams & Fraud" Conference (London)

April 25
- "Equity Valuation – Financial ratios and Financial Statements" Seminar (Toronto)
- ILC Investment Fraud Luncheon Seminar (Toronto)
- "Protect Yourself from Investment Scams & Fraud" Conference (Sarnia)

April 26
- JA School Blitz (Toronto/York Region)
- ILC Investment Fraud Luncheon Seminar (Toronto)
- Rogers Television Money Line Show (Province wide)
- IFIC Luncheon Seminar (Toronto)

We will be placing features in various magazines distributed in Ontario and two up-to-date booklets (Making a Complaint & With Whom are you Dealing – an investors guide to registrant categories) will be available to the investing public.

In the weeks leading up to the 2001 Investor Education Campaign please visit our website at www.osc.gov.on.ca for updates, times, and locations of events.
For more information please call **Theresa Kozinski** at 416-595-8917.

Commission Approval for CDNX Exemption

The Commission has approved an application from the Canadian Venture Exchange (CDNX) for exemption from recognition as a stock exchange under section 21 of the Act. The exemption order and the accompanying schedules were published in the OSC Bulletin on December 22, 2000.

CDNX is the product of the merger between the Alberta Stock Exchange and the Vancouver Stock Exchange. The Toronto Stock Exchange transferred its operation of the Canadian Dealing Network (CDN) to CDNX. CDNX is a recognized exchange in Alberta and British Columbia, and is subject to the direct oversight of the ASC and the BCSC. A Memorandum of Understanding (MOU) between the OSC, the ASC and the BCSC regarding oversight of CDNX has been developed.

CDNX also assumes responsibility for the operation of a system that reports trades of unlisted equity securities through, or by dealers. The Canadian Unlisted Board Inc. ("CUB"), a wholly owned subsidiary of CDNX, began operation in October 2000. Dealers are required to report trades in unlisted equity securities (that are not excluded from the reporting requirements) to CUB for surveillance and enforcement purposes. This information is not published. The Commission received a number of comments which objected the removal of the last trade price visibility that existed on CDN. The Commission has asked staff to monitor this issue and report back to the Commission.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257 or **Susan Greenglass**, Legal Counsel, Market Regulation, (416) 593-8140.

OSCB December 22, 2000, p. 8437

IOSCO Publication

The International Organization of Securities Commissions (IOSCO) and the Committee on Payment and Settlement Systems (CPSS) of the Central Banks of the Group of Ten Countries have recently published a Report containing a series of recommendations to improve the safety and efficiency of securities settlement systems.

The Report, entitled Recommendation for Securities Settlement Systems – Report of the CPSS-IOSCO Joint Task Force on Securities Settlement Systems is available on the IOSCO website (www.iosco.org). The Task Force is seeking public comments by April 9.

For more information, please call **Randee Pavalow**, Manager, Market Regulation, (416) 593-8257 or **Maxime Pare**, Senior Legal Counsel, Market Regulation, (416) 593-3650.

OSCB January 26, 2001, p. 538

Take-Over and Issuer Bids

Amendments governing the conduct of take-over bids and issuer bids under securities legislation (colloquially known as the "Zimmerman Amendments") are intended to come into effect on March 31, 2001. In 1996 a committee of the Investment Dealers Association of Canada (the "Zimmerman Committee") issued a report setting out 14 recommendations on take-over and issuer bid time limits.

The Committee's key recommendation was lengthening the minimum bid time periods to permit the target company and its shareholders more time to consider the bid and to seek other offers, as well as giving offerors the option of commencing a take-over bid by way of advertisement.

"The Committee's key recommendation was lengthening the minimum bid time periods to permit the target company and its shareholders more time to consider the bid and to seek other offers..."

The CSA agreed to adopt the recommendations and established a committee to develop uniform wording for amendments in the eight jurisdictions with take-over and issuer bid provisions in their securities legislation. The committee completed its work in late 1997 and the first legislative amendments were passed in Alberta and British Columbia in 1998. The Zimmerman Amendments were subsequently passed but not proclaimed in Ontario and Saskatchewan in 1999 and are under consideration in Quebec and awaiting introduction in Manitoba, Nova Scotia and Newfoundland. However, it is intended that the Zimmerman Amendments will become effective in Manitoba, Nova Scotia and Newfoundland on March 31 by way of interim blanket order pending the passage of the necessary legislative amendments.

The Commission des valeurs mobilières du Québec (CVMQ) is not in a position to implement the Zimmerman Amendments until the necessary legislative amendments have been passed. If these legislative amendments are not proclaimed by March 31, 2001, two take-over/issuer bid regimes will exist in Canada. Therefore, if a bid involves offeree shareholders in both Quebec and a jurisdiction that has implemented the Zimmerman Amendments, bidders and targets will have to comply with both regimes. Where differences between the regimes exist, the more onerous rules must be complied with. The CVMQ intends to issue a Notice concerning the status of the Zimmerman Amendments in Quebec shortly, which will be available on their website.

The full text of the Zimmerman Amendments can be found on the Ontario Securities Commission website at: www.osc.gov.on.ca and were published in Ontario on December 24, 1999 at 22 OSCB 8395.

For more information, please call **Ralph Shay**, Director, Take-Over/Issuer Bids, Mergers & Acquisitions, (416) 593-2345.

FAQ's on the New Prospectus Rules

On December 31, 2000, the following rules and National Instruments came into effect:

- General Prospectus Requirements (Commission Rule 41-501);
- General Prospectus Requirements (National Instrument 41-101);
- Short Form Prospectus Distributions (National Instrument 44-101);
- Shelf Distributions (National Instrument 44-102); and,
- Post-Receipt Pricing (National Instrument 44-103).

These new rules govern the use of prospectuses, short form prospectuses, shelf prospectuses and PREP prospectuses by issuers other than mutual fund issuers.

In response to the questions received since the new prospectus rules came into effect, Staff of the CSA has decided that it would be helpful to issue some interpretational guidance. Consequently, Staff of the Corporate Finance Branch are now in the process of preparing CSA Staff Notice 44-301 ***Frequently Asked Questions Regarding the New Prospectus Rules***. When completed, OSC staff intends to publish the FAQ in both the OSC Bulletin and on the OSC website, concurrently with its publication by other CSA members. Staff hopes that the FAQ's will be a useful guide to issuers and their advisors in the preparation and filing of prospectuses.

For more information, please call **Michael Brown**, Legal Counsel at (416) 593-8266.

Web-based Investor Protection Resources

Videos based on a conference series on investor protection are now available on the Internet. The conference series, entitled "Protecting Yourself Against Investment Scams and Frauds," is the result of a partnership between the OSC and the Canadian Association of Retired Persons (CARP). The videos are available at www.fifty-plus.net.

Not-for-profit organizations can obtain free VHS tapes of the series through the OSC Inquiries Line at (416) 593-8314, tollfree at 1-877-785-1555, or CARP at (416) 363-8748.

For more information, please call **Alicia Ferdinand**, Investor Education Officer, (416) 593-8307.

CHIEF ECONOMIST REPORT

Global Data Warming

Global capital markets have come a long way since the days when an arbitrage trader could generate easy profits by reading ticker tape and taking advantage of price imbalances in different markets. Information flowed at a glacial pace and maintained value for much longer than it does today.

New technology has transformed the capital market arena. The introduction of computer screens, and the resulting ease with which information can be readily accessed, has rapidly increased the rate and flow of information available. Unfortunately this has also meant that the life-span and pertinence of this data is becoming increasingly shortlived. The structure of the industry has been equally altered as arb traders have been transformed into hedge funds and price discovery/execution have become real-time events.

One of the best examples of the rapid decay of information is the release of economic data. First, estimates are made and built into the market pricing. On release, there is a knee-jerk reaction within seconds to any difference between the expected and the announced numbers. Within three to ten minutes, the details are analyzed and a secondary wave of trading takes place. So, well before the opening of the equity markets, the data has been priced into securities and therefore has no value from an investment perspective.

The period from roughly 1975 to 1995 can be described as a temperate zone with a warming trend for information. The information pipeline became broader and more efficient, but by no means universal or instantaneous. The emphasis shifted from simply acquiring information and acting on it to uncertainty over who had what information and the quality of the information available.

One example of the impact of uncertainty, lies in trading day analysis. While less pronounced, for years far less trading took place on Mondays than on the rest of the week. Did investors simply take a lot of long weekends? More plausible is the view that institutional investors were concerned that insiders or dealers acquired new information over the weekend, putting the uninformed at a disadvantage. As information becomes more readily available and more rapidly reflected in prices, the trading day effect has become less pronounced.

Another example from this period deals with the value of analysts' rating changes. A study of changes in US consensus outlooks found that, if acted upon immediately, returns of 75 basis points a month over the market index were generated. Over a period of just two days, the value of that information decayed to a point statistically insignificant from zero.

This was before the advent of day-trading and internet bulletin boards. The tropical swamp of data that we wade through today has almost certainly accelerated the time decay of information.

The increasingly rapid decay in the value of information doesn't mean that the overall value is less; if anything it is worth more, just for shorter periods of time once released.

The implications for regulators are that, as always, there is little incentive for market participants to disclose information until profits have been locked in and, increasingly, the speed of dissemination is critical. The other side of immediate and widespread disclosure is the cost of implementation. We should keep this in mind when looking at major industry developments like T+1.

Even privileged access to liquidity and flow data is being challenged by electronic distribution both pre- and post-trade. While the upstairs market currently protects investors from the impact of large size trades while potentially benefitting dealers, the proliferation of electronic markets could change this structure as well. The ability to trade anonymously on a number of ECNs would allow large transactions to take place with minimum market impact and transaction cost.

The rewards implied by disintermediation are substantial. Greater equality and less tilt in the playing field of access to information are promoted. Improved access to the facts should generate a higher level of market integrity and increased participation in the capital markets. It also allows investors to focus on the critical element in investing – the degree of uncertainty surrounding future returns in the security, rather than privilege in access to data. This is similar to the shift from arb trader to hedge fund.

The huge growth in ECN participation in the US and discount brokers in both Canada and the US best illustrates the changes taking place. These new models are forcing dealers to rethink the role of the adviser as many investors question the need for them.

Greater access to information also means greater access to incorrect information and an increased need to process that information. Both have been factors in the increased market volatility.

Will the current state of data access continue to heat up, taking the markets from tropical to equatorial or a warm superconducting state? Will the programmed trading functions that have taken over some of the trading functions come to dominate the markets? Perhaps the web-based financial analysis packages that many of the brokers offer will develop into the long awaited intellibots scouring the web for opportunities and best execution.

In either case, rapid access to information will continue to be the most important feature in finance, and uncertainty over next year's markets will persist at least as long as tomorrow's weather continues to surprise us.

For more information, please call **Randall Powley**, Chief Economist, (416) 593-8072

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

OSC Approves Settlement of Proceeding Against Amalgamated Income Limited Partnership and 479660 B.C. LTD.

At a hearing on February 12, 2001, the Ontario Securities Commission (the "Commission") approved a settlement agreement entered into between Staff of the Commission and Amalgamated

Income Limited Partnership ("Amalgamated") and 479660 B.C. Ltd. (the "General Partner") (collectively, the "Respondents").

The Respondents admitted they contravened Ontario securities law and acted in a manner contrary to public interest. In the Settlement Agreement, the Respondents admitted to contraventions of the early warning reporting, insider trading reporting and take-over bid requirements contained in Parts XX and XI of the *Securities Act* (the "Act") during the period beginning from 1995 to 2000 in connection with certain acquisitions by Amalgamated of units in various limited partnerships, as well as a breach of representations to Staff concerning Amalgamated's compliance with these requirements. 479660, by virtue of its powers, duties and obligations as the General Partner of Amalgamated, admitted to authorizing the contraventions of the *Act* by Amalgamated contrary to public interest.

In accordance with the terms of the approved settlement, Amalgamated has filed the outstanding reports, and represented to Staff that it intends to comply with its reporting requirements under Ontario securities law. Outstanding filing fees in the amount of $60,038.86 have been paid to the Commission by Amalgamated, as well as the payment in the amount of $20,000.00 to the Commission in respect of a portion of the Commission's costs with respect to this matter.

The settlement further provides that the Respondents will submit to a review by Blake, Cassels & Graydon LLP of their compliance practices and procedures and report in writing to Staff and Blake, Cassels & Graydon LLP as to the implementation of the recommendations within reasonable timeframes.

OSC Approves Settlement in Proceeding Against Lois King

At a hearing on February 19, 2001, the Ontario Securities Commission (the Commission) approved a Settlement Agreement entered into between Staff of the Commission and Lois Doreen King.

Ms. King was a principal of Boulder Management Inc., a firm that managed four closely held investment funds distributed by private placement. Ms. King admitted that on several occasions in late 1999, she made inappropriate entries in Boulder's records, with the effect of overvaluing units of the various funds. Ms. King subsequently took steps to try to conceal this misconduct from Boulder's auditors.

In the Settlement Agreement, Staff of the Commission acknowledged that Ms. King had cooperated fully in the investigation of the matter and had brought about an early settlement.

The Commission ordered the following sanctions:

- Ms. King's registration be terminated;
- Ms. King be prohibited from trading in securities for a period of three years from the time she admitted her misconduct, except that she may trade for her own account; and
- Ms. King be reprimanded by the Commission.

OSC Approves Settlement Agreement and Imposes Sanctions Against Noram Capital Management, Inc. and Andrew Willman

At a hearing on February 9, 2001, the Ontario Securities Commission (the "Commission") approved a Settlement Agreement entered into between Staff of the Commission and Noram Capital Management, Inc. ("Noram") and Andrew Willman (the "Respondents").

The Settlement Agreement was signed on February 9, 2001, and the allegations are as follows:

The Respondents admitted they contravened Ontario securities law and acted in a manner contrary to the public interest. In the Settlement Agreement, the Respondents admitted they failed to deal fairly, honestly and in good faith with clients of Noram, over more than a seven year period by among other things, making unsuitable investments, failing to adequately disclose the risks associated with certain investments, including leveraged investments, making misleading statements to clients regarding investments, making misleading and inaccurate representations in advertising and promotional materials, engaging in personal trading and principal trading and self-dealing. In addition, the Respondents admitted that they breached an Order of the Commission dated September 29, 1999, which suspended Noram's registration effective October 7, 1999, by failing to provide the Commission with certain financial reporting documentation.

The Commission held that on the basis of the facts admitted in the Settlement Agreement, Andrew Willman showed a complete lack of concern for his clients and the marketplace, and that his conduct was as serious as any that has recently been before the Commission. The Commission held that Staff's characterization of the Respondents' conduct as "egregious" was a "mild understatement." The Commission stated that on the basis of the admitted facts the panel was prepared to make a finding that Mr. Willman was a "scoundrel."

The Commission ordered the following sanctions:

- Willman and Noram's registration be terminated permanently;
- Willman cease trading in securities permanently, including for his own personal account;
- Willman be prohibited from becoming or acting as a director or officer of any issuer permanently;
- Willman and Noram be reprimanded; and
- Willman and Noram pay costs in the amount of $82,500 to the Commission.

Global Privacy Management Trust and Robert Cranston

On December 8, 2000 the Ontario Securities Commission issued a Temporary Cease Trade Order against Global Privacy Management Trust and Robert Cranston for a period of fifteen days.

The hearing scheduled for December 20, 2000 on this matter has been adjourned and on the consent of the Respondents and Staff of the Commission, the Temporary Order has been extended until such time as a hearing in this matter is completed.

The Statement of Allegations is dated December 12, 2000, and the allegations are as follows:

- Robert Cranston ("Cranston") is the principal of GPMT;
- GPMT has an advertisement on the Internet which encourages potential investors to sign up for a free newsletter. The newsletter advocates investment in bank debenture trading programs and makes reference to a "250K program," which investors may obtain more information;

- The "250K program" purports to be an offering of preferred shares in a closed-end investment that will trade in investment grade fixed income securities. The program promises to pay a return of at least 12% per month over a term of 12 months;
- The respondents advertise that the shares in the investment are issued by a named registered limited market dealer. The named limited market dealer has no involvement in the advertised program;
- Neither GPMT nor Cranston is or was registered to trade in securities in any capacity under the *Act*;
- By soliciting investments in the trading programs, GPMT and Cranston traded in securities without registration, contrary to Ontario securities law; and
- The trading programs offered by GPMT and Cranston constituted a distribution of securities for which no prospectus was issued and no exemption was available, contrary to Ontario securities law.

First Federal Capital (Canada) Corporation and Monte Morris Friesner

On December 11, 2000, the Ontario Securities Commission issued a Temporary Cease Trade Order against First Federal Capital (Canada) Corporation and Monte Morris Friesner for a period of fifteen days.

The hearing scheduled for December 20, 2000 on this matter has been adjourned and on the consent of the Respondents and Staff of the Commission, the Temporary Order has been extended until such time as a hearing in this matter is completed.

The Statement of Allegations is dated December 12, 2000 and the allegations are as follows:

- Monte Morris Friesner ("Friesner") is the president and chief executive officer of First Federal;
- First Federal has an advertisement on the Internet which encourages potential investors to invest in Asset Securitization Management Portfolios and promises to pay a return of at least 20% and up to 70% or more with no risk (the "Trading programs");
- Neither First Federal nor Friesner, is or has ever been, registered in any capacity under Ontario securities law;
- The activities of First Federal and Friesner constitute trading in securities without registration, contrary to Ontario securities law; and
- The trading programs offered by First Federal and Friesner constitute a distribution of securities for which no prospectus was issued and no exemption was available, contrary to Ontario securities law.

Offshore Marketing Alliance and Warren English

On December 11, 2000 the Ontario Securities Commission issued a Temporary Cease Trade Order against Offshore Marketing Alliance and Warren English for a period of fifteen days.

The hearing scheduled for December 20, 2000 on this matter has been adjourned and on the consent of the Respondents and Staff of the Commission, the Temporary Order has been extended until such time as a hearing in this matter is completed.

The Statement of Allegations is dated December 12, 2000, and the allegations are as follows:

- Offshore Marketing Alliance ("OMA") is incorporated under the laws of Belize as an International Business Corporation, but carries on business in Ontario;
- Warren English ("English") is the principal of OMA;
- OMA purports to offer trading programs for the trading of securities. OMA uses Internet e-mail mailing lists to communicate the existence and terms of the trading programs;
- Neither OMA nor English is registered in any capacity under Ontario securities law;
- The sale of memberships and entries into the trading programs offered by OMA constituted a distribution of securities for which no prospectus had been issued and no exemption was available, contrary to Ontario securities law; and
- By soliciting investments in the trading programs, English and OMA traded in securities and acted as advisors without registration, contrary to Ontario securities law.

Terry Dodsley

On December 11, 2000 the Ontario Securities Commission issued a Temporary Cease Trade Order against Terry Dodsley for a period of fifteen days.

The hearing scheduled for December 20, 2000 on this matter has been adjourned and on the consent of the Respondent and Staff of the Commission, the Temporary Order has been extended until such time as a hearing in this matter is completed.

The Statement of Allegations is dated December 12, 2000, and the allegations are as follows:

- Terry G. Dodsley ("Dodsley") is not, nor has he ever been, registered with the Ontario Securities Commission (the "Commission") in any capacity;
- Dodsley has an advertisement on the Internet relating to investment opportunities and services;
- In October, 2000, Dodsley had an advertisement in an Ontario community newspaper advertising his services in the area of commodities trading;
- Dodsley traded in securities without being registered as required pursuant to Ontario securities law; and
- Dodsley held himself out as carrying on the business of advising with respect to securities, without being registered as required pursuant to Ontario securities law.

Ontario Court of Justice Convicts Arnold Guettler, Neo-Form Corporation and Neo-Form North America Corp. of Securities Offences

On February 6, 2001, the Honourable Mr. Justice Babe of the Ontario Court of Justice found Arnold Guettler, Neo-Form Corporation and Neo-Form North America Corp. guilty of:

- Trading in securities, namely shares and promissory notes issued by the Defendants, without being registered to trade in such securities.
- Trading in such securities without having filed a prospectus contrary to the *Securities Act*; and
- Making representations that the shares of Neo-Form Corporation and Neo- Form North America Corp. would be listed on a stock exchange with the intention of effecting

trades in such securities contrary to section 38(3) of the Securities Act.

The Defendants were found not guilty of giving undertakings as to the future value of the shares of Neo-Form Corporation and Neo-Form North America Corp. to potential investors with the intention of effecting trades in such securities contrary to section 38(2) of the Securities Act.

Between October 15, 1994 and January 10, 1997, the Defendants raised in excess of $2 million dollars from the sale of shares and promissory notes to approximately 140 investors.

The sentencing hearing for the Defendants before the Honourable Mr. Justice Babe is scheduled for 10:00 a.m. on April 17, 2001 at Old City Hall, 60 Queen Street West, Toronto.

OSC Approves Settlement for MacDonald Oil Exploration Ltd., MacDonald Mines Exploration Ltd., Mario Miranda and Frank Smeenk

At a hearing on January 12, 2001, the Ontario Securities Commission approved a settlement entered into between Staff of the Commission and MacDonald Oil Exploration Ltd., MacDonald Mines Exploration Ltd., Mario Miranda and Frank Smeenk. The Commission issued a Notice of Hearing and Statement of Allegations against the respondents on January 9, 2000.

In the Settlement Agreement the Respondents admitted to conduct that contravened various securities law requirements, including the following:

The Commission reprimanded the respondents and ordered MacDonald Oil to submit to a review of its practices and procedures, including its practices relating to compliance by its directors, officers and principal shareholders. The Commission also ordered that Mario Miranda cease trading in all securities for a six month period and Frank Smeenk cease trading in all securities for a twelve month period, subject to a limited exception permitting them to dispose of securities held on the date of the Settlement Agreement. The Commission prohibited Mario Miranda and Frank Smeenk from serving as the chair of MacDonald Oil's Board of Directors or as members of the MacDonald Oil Board's audit, corporate governance, compliance or executive committees but did not otherwise restrict their ability to serve as directors of MacDonald Oil. The Commission also prohibited Mario Miranda and Frank Smeenk from acting as officers of MacDonald Oil, subject to a limited exception permitting Frank Smeenk to continue to act as MacDonald Oil's executive vice president. Finally, the Commission ordered MacDonald Oil to pay $50,000, MacDonald Mines to pay $15,000, Mario Miranda to pay $5,000 and Frank Smeenk to pay $5,000 to the Commission in respect of a portion of the Commission's costs for this matter.

RECENT SPEECHES

DEALING WITH CHANGE:

Shaping Financial Regulation for the Future

Remarks by David A. Brown, Q.C. Chair, Ontario Securities Comission, The Canadian Club March 12, 2001

The traditional four pillars - banks, insurance companies, securities firms and trust companies - have melded together. Deregulation opened them up. Innovation, new technologies, and customer demand for new products drove them onto each other's turf - along with new participants. More and more financial services are being delivered by huge conglomerates integrated across the sectors. In fact, for most financial players, the left-hand sides of their balance sheets - the revenue generating side - are now almost identical.

The industry has been remodeling itself. Shouldn't the regulatory system be doing the same? That identical question is being raised in virtually every jurisdiction in the industrialized world.

On four continents, we're seeing regulatory reforms to ensure consistent regulation of similar activities - regardless of the sector in which the financial institution was traditionally grouped. As the Wall Street Journal put it last week - "the idea is catching on." In many parts of the world, harmonization is being pursued through horizontal integration. In Australia, a single regulator now regulates the market conduct of all financial institutions. In the U.K., nine separate agencies have been combined into one, regulating all aspects of securities, insurance, pensions and banking. A similar integrated concept is being followed by Germany, Japan, and the Republic of Ireland. To date, at least 15 countries have moved to consolidate regulators. Governments all over the world are coming to terms with the need to regulate on the basis of a financial institution's current activity, rather than its historic nature. The only difference is in the precise regulatory formula, based on distinct political traditions and culture.

Ontario's proposal is in keeping with the latest global thinking. As a single agency, the proposed Ontario Financial Services Commission will be better positioned to ensure consumer and investor protection from unfair, improper or fraudulent practices, and to vigorously enforce clear and unambiguous rules. It will simplify financial service regulation by providing investors, consumers and financial service industry participants with one window to turn to.

Consumers will be able to enjoy the same comfort level in dealing with any entry point to the financial system. Consistent purchase disclosure documents will make it easier to compare products across sectors. Consistent proficiency standards will apply to your insurance agent, pension consultant, financial planner, securities salesperson and mutual fund salesperson. Decision-making will be streamlined, and duplication eliminated. All financial institutions will be provided with a level playing field; similar financial products will be subject to similar regulation.

develop a set of standards that could be accepted by all regulators for cross-border offerings. In May 2000, IOSCO endorsed a set of core International Accounting Standards (IAS) developed by the IASC and recommended that member regulators accept them, with limited supplementary information.

The Canadian Accounting Standards Board has, for the past few years, been working with major foreign standards-setting bodies toward the convergence of accounting standards. The goal of convergence is to develop IAS as a single set of internationally accepted accounting standards. Recognizing that international convergence will take some years and that Canada's most important foreign market is the U.S., the AcSB has also been working on a more accelerated basis to eliminate the major differences between Canadian and U.S. GAAP.

Canadian securities rules require Canadian-based reporting issuers to use Canadian GAAP in all their financial statement filings. Foreign-based reporting issuers may use the accounting principles of their home jurisdictions, but must reconcile to Canadian GAAP for financial statements in a prospectus. They are not generally required to provide a reconciliation for continuous disclosure filings except in British Columbia. In some other jurisdictions, a requirement to reconcile is often imposed as a condition of any continuous disclosure exemption provided to a foreign issuer.

Canadian Issuers in the U.S.

A significant number of Canadian issuers have raised capital or listed their securities in the United States. They are required to file their continuous disclosure financial statements with the U.S. Securities and Exchange Commission, including a reconciliation from their Canadian GAAP financial statements to U.S. GAAP. Some Canadian issuers have chosen to prepare a full set of U.S. GAAP financial statements to increase their market acceptance in the U.S.

We have been told that the current rules deter foreign issuers from doing public offerings in Canada, denying investment opportunities to Canadian investors.

We have been told that the current rules deter foreign issuers from doing public offerings in Canada, denying investment opportunities to Canadian investors. We have also been told that, for Canadian issuers listed in the U.S. who choose to prepare a complete set of U.S. GAAP statements, any benefit to Canadian investors of continuing to prepare Canadian GAAP statements is outweighed by the costs involved.

There are, however, some difficult issues that complicate the question of accepting IAS or U.S. GAAP for regulatory filings in Canada. These include:

- *Comparability* — Having as many as three different sets of accounting standards for reporting issuers would make it more difficult for Canadian investors and analysts to compare results for different issuers.
- *Professional capacity* — Canadian accounting professionals have limited knowledge of U.S. GAAP and virtually no experience with IAS. A significant effort would be required for issuers, auditors and regulators to build sufficient expertise to handle increased use of these other sets of standards while maintaining high standards of compliance.
- *Other Statutory Requirements* — Even if the CSA exempts Canadian issuers from filing Canadian GAAP financial statements, they may still be required under corporate or tax statutes. The desired cost savings would be achieved only if these other requirements can be removed.

The Discussion paper is available on the Ontario, B.C., and Alberta website.

To assist in determining how to move forward, the CSA are seeking responses to 17 detailed questions. These questions, which are set out in the Discussion Paper, are supported by an extensive examination of the issues that need to be addressed to facilitate any proposed changes from the current regime. We encourage you to review the paper and respond to as many of the questions as you can based on your experience. Responses should be provided by June 30, 2001, to ensure that your views are considered.

For more information please call **John Carchrae**, Chief Accountant, (416) 593-8221.

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The OSC web site, www.osc.gov.on.ca includes:
Information on the OSC; Investor Information,
Rules and Regulations, Enforcement Information
and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 4, Issue 2

SUMMER 2001

inside...

FEATURE

OSC Proposes Further 20 Per Cent Cost Reduction For Market Participants

The Ontario Securities Commission has put forward a comprehensive proposal to reduce regulatory costs for market participants by an estimated 20 per cent as part of reforms to its fee schedule. The proposed fee schedule is also intended to be simpler to understand and allocate costs more fairly among market participants.

The proposal was developed with extensive industry cooperation, including focus groups with reporting issuers, dealers, advisers, mutual fund managers, the Investment Dealers Association of Canada and the Investment Funds Institute of Canada.

The Concept Proposal published for comment by the OSC fulfills its commitment to streamline the current fee schedule and charge fees that better reflect the services provided. It is anticipated that costs will increase for some market participants and decrease for others, but overall, costs for

(continued on page 11)

INDEX

THE OSC WEBSITE, WWW.OSC.GOV.ON.CA INCLUDES:
INFORMATION ON THE OSC; INVESTOR INFORMATION; RULES AND REGULATIONS; ENFORCEMENT INFORMATION AND MARKET PARTICIPANTS.

Perspectives welcomes letters to the Editor. Letters should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8

POLICY PROFILES

An overview of policy initiatives and where they stand in the policy development and implementation process.

Consultation Draft on Proposed OSC-FSCO Merger Circulated for Public Comment

Establishing a Single Financial Services Regulator: Consultation Draft is being circulated to solicit comments and responses on the legislative proposals involving the merger between the Ontario Securities Commission and the Financial Services Commission of Ontario. While the draft sets out specific proposals, it is intended as a document for both the public and the government to work from.

"The Consultation Draft would establish a new corporation to be known as the Ontario Financial Services Commission. Its purpose would be to plan and supervise the establishment of a single regulatory authority that would be responsible for the regulation of financial services in Ontario."

In dealing with these legislative proposals of significance to the regulation of the financial sector, the Government of Ontario considers it important to seek out the views of industry participants and the public at large. Interested parties were invited to make written submissions by June 29, 2001 to John R. O'Toole, M.P.P. and Parliamentary Assistant to the Minister of Finance.

Background and Consultation to Date

The 2000 Ontario Budget announced the merger of the Ontario Securities Commission (OSC) and the Financial Services Commission of Ontario (FSCO) into a single financial services regulator. That announcement reflected the government's direction to create an effective one-window regulatory process to improve consumer protection and to better serve the financial services sector and its clients.

A discussion paper, *Improving Ontario's Financial Services Regulation: Establishing a Single Financial Services Regulator*, was released for public comment in September, 2000. That paper provided the government's rationale for merging the OSC and FSCO.

Several written submissions were received from consumers, investors, pension plan members, and industry participants from the financial services sector. As well, oral submissions were made to David Young, formerly Parliamentary Assistant to the Minister of Finance.

While the majority of stakeholders endorsed the plan to merge the OSC and FSCO, many expressed a desire to see further details. The release of the Consultation Draft will allow those affected to scrutinize the draft legislation and to provide their comments and suggestions.

Summary of Proposals

The Consultation Draft would establish a new corporation to be known as the Ontario Financial Services Commission. Its purpose would be to plan and supervise the establishment of a single regulatory authority that would be responsible for the regulation of financial services in Ontario. The consultation draft also provides for the subsequent merger of this new corporation with FSCO and the OSC to form a single Commission that would keep the name of the newly established corporation.

"The Consultation Draft emphasizes the importance of having an effective financial regulator which promotes a healthy environment for business activity, financial market integrity, and consumer, investor, and pension plan member confidence and protection."

The new Commission would provide regulatory services with a view to protecting the public interest, protecting consumers of financial services and products, enhancing public confidence in the regulated sectors, and fostering a fair, efficient, and effective financial services marketplace.

The structure and powers of the new Commission are set out in the Consultation Draft.

Consequently, the general provisions dealing with the structure of the Ontario Securities Commission and its powers would be repealed in the *Securities Act* and the *Commodity Futures Act*. The repealed provisions include those setting out the composition and mandate of the Securities Commission, investigation powers, and accountability.

The process for making rules and for the adoption of policies by the Ontario Securities Commission would be repealed in the *Securities Act* and the *Commodity Futures Act* as these powers would now be set out in the framework legislation to the new Commission. The heads of authority with respect to which the new Commission may make rules would continue to be as set out in the *Securities Act Commodity* and in the *Commodity Futures Act* and no changes are proposed in this regard.

The provisions setting out the process for recognizing self-regulatory organizations are being repealed as these would now be dealt with by the new Commission. However, provisions dealing with the recognition of stock exchanges and the registration of commodity futures exchanges would remain in the *Securities Act* and the *Commodity Futures Act* respectively.

Future Prospects

The financial services landscape in Canada has shifted over recent years. The pace of change is expected to continue and intensify, reflecting the needs of both consumers and business, customer demand for new products and services, and the advent of new information-based electronic technologies, as well as global competition from specialized financial institutions and capital markets. The Consultation Draft encompasses these changes. It also emphasizes the importance of having an effective financial regulator which promotes a healthy environment for business activity, financial market integrity, and consumer, investor, and pension plan member confidence and protection.

Copies of the consultation draft may be obtained from the Ontario Government Bookstore, 880 Bay Street, Toronto, Ontario, M7A 1N8. As well, the Consultation Draft is available on the Ministry of Finance Website at www.gov.on.ca/FIN.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245.

New Approach to Cease Trade Orders Finalized

As part of an effort to ensure that shareholders of public companies do not experience the sudden loss of liquidity that would result from a general cease trade order on their securities, the Ontario Securities Commission finalized a new approach to imposing cease trade orders for failure to file final statements on time.

Under new OSC Policy 57-603, Defaults by Reporting Issuers in Complying with Financial Statement Filing Requirements, even if a company is in default of its obligations to file financial statements, the Commission will not always impose a general cease trade order on the company. When the company places certain alternative information on the public record, including all material information that has not been generally disclosed, cease trade orders will only be imposed on the company's directors, officers and insiders that would have access to any undisclosed material information.

The Commission will normally allow this alternative approach to continue for two months after the filing deadline. After two months, a general cease trade order will be issued.

The current 140-day filing period for annual financial statements allows ample time for any company to meet its obligations to file financial statements. However, in those rare cases where the company defaults on its obligations, the Commission's new approach will maintain shareholder liquidity for an additional two month period if all material information has been disclosed.

For more information, please call **John Hughes**, Manager, Continuous Disclosure Team, (416) 595-3695 or **Ritu Kalra**, Senior Accountant, Continuous Disclosure Team, (416) 593-8063.

OSC Bulletin, April 27, 2001, Volume 24, Issue 17, Page 2598.

Policy Reformulation Project

In 1995, the Commission embarked upon a comprehensive review of 292 local and national policy instruments to determine whether they should be reformulated, retained "as is", or eliminated. While the primary objective of reformulation has been to ensure that these policy instruments are brought into conformity with required language and form, the Commission has also been guided by the broader objective of creating a regulatory regime that is more effective, transparent and accessible.

The result has been a substantial streamlining of securities regulation in Ontario.

- One-third of the instruments reviewed during the reformulation process have been eliminated. A further reduction is anticipated as decisions are made about the fate of 23 instruments currently under consideration.

- 149 of the instruments reviewed have been reformulated into 89 new instruments.

- 62 of the 89 reformulated instruments to emerge from the project are now either in force or are expected to come into effect by the end of this year. Included among these are **Rule 45-501** General Prospectus Requirements, **NI 43-101** Standards of Disclosure for Mineral Projects, **Rule 61-501** Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions, **NI 81-101** Mutual Fund Prospectus Disclosure and **NI 81-102** Mutual Funds.

"The Commission has also been guided by the broader objective of creating a regulatory regime that is more effective, transparent and accessible."

The Policy Reformulation Project was undertaken in the wake of the 1993 Ainsley decision, the subsequent recommendations of the Ontario Task Force on Securities Regulation, and resulting amendments to the Securities Act which gave the Commission rule-making authority. A Table of Concordance for the project, which provides updated information on the status of each of the instruments reviewed during the reformulation process, is published quarterly in the Bulletin and on the website. The next update will appear in the July 6th issue of the OSC Bulletin.

For more information, please contact **Kathleen Finlay**, Manager, Project Office, (416) 593-8125.

OSC REPORTS

An inside look at Commission developments and projects that will have an impact on the investment community.

OSC Adopts 2001/2002 Statement of Priorities

The *Securities Act* requires the Ontario Securities Commission to deliver to the Minister of Finance a statement by the Chair setting out the proposed priorities for the Commission for its current financial year. The 2001/2002 Statement of Priorities articulates the business strategy and priorities the Commission has set to accomplish these goals.

The integration activities associated with the merger of the Ontario Securities Commission and the Financial Services Commission of Ontario will be a prime focus during 2001/2002. The Commission remains committed to delivering its regulatory services in a business like manner and working closely with its CSA colleagues and market participants to ensure that the regulatory system remains relevant to the changing market landscape.

During 2001/2002 fiscal year, the Commission will continue to advance its regulatory agenda by directing its resources towards achievement of the following 12 priorities:

1. The Commission will work to develop approaches to financial regulation which support market integration and innovations due to technological change. The OSC will continue to strive to develop approaches which maintain or enhance the ability of small businesses to access capital through junior and venture capital markets and which will enhance the efficiency, fairness and integrity of capital markets.

2. The Commission will increase its focus on disclosure review and strengthen SRO oversight to ensure effective and efficient regulation of the securities industry. The OSC will continue to increase its presence and effectiveness through compliance and enforcement activities.

3. The Commission will take action to strengthen the framework of requirements for timely and reliable continuous disclosure of information by reporting issuers and will actively pursue inappropriate financial reporting practices and address emerging issues either directly or through private sector standards setting bodies.

4. The Commission will focus on completing the necessary legislative, regulatory and operational changes to address the growing importance of continuous disclosure and technological change in the secondary markets.

5. In conjunction with CSA counterparts and other regulatory entities, the OSC will continue to develop national harmonized approaches to the regulation of financial products, services and SRO's in order to maintain a globally competitive regulatory framework.

6. The Commission will implement a more streamlined fee structure which aligns its revenues more closely to costs.

7. Through its support of the newly created Investor Education Fund as well as through partnerships with other organizations (e.g. CSA, SRO's)., more emphasis will be placed on investor education initiatives aimed at enabling investors to better protect themselves.

8. The Commission is committed to developing approaches to strengthen the governance of mutual funds and to making other changes necessary to improve the structure, management and distribution of mutual funds.

9. The Commission will continue to support the Minister of Finance in the development and implementation of a new merged financial services agency that will better meet the needs of investors and market participants and continue to provide a high level of protection to consumers.

10. The Commission plans to continue to participate proactively in the international regulatory community.

11. The Commission has developed and implemented accountability mechanisms to ensure that the OSC continues to effectively and efficiently meet the needs of its constituents.

12. The Commission will strive to provide a dynamic and stimulating environment in order to attract, retain and motivate employees who are capable of and committed to achieving our business goals in a performance based culture.

For more information on the OSC's Statement of Priorities, please contact **Robert Day**, Manager, Business Planning and Reporting, (416) 595-8179.

OSC Raises Public Awareness during 4th Annual Investor Education Week

The 4th annual National Investor Education Week Campaign highlighted the importance for investors to "Invest Time Before You Invest". During this year's campaign, held from April 23 to 27, 2001, securities regulators and industry organizations across Canada encouraged individual investors to practice personal "due diligence" about their advisors, their investments and reliable sources of financial information.

A wide range of educational seminars, print materials and online resources were made available at the regional, provincial and national levels to raise public awareness of investor protection issues.

OSC Chair David Brown launched Investor Education Week activities in Ontario during a breakfast meeting sponsored by the Investment Funds Institute of Canada. In his address, Mr. Brown encouraged investors to invest one of their most valuable resources - their time - to pursue a prudent and knowledge-based investment strategy.

"A wide range of educational seminars, print materials and online resources were made available at the regional, provincial and national levels to raise public awareness of investor protection issues."

The OSC launched three new consumer brochures including *A Step-by-Step Guide to Making a Complaint, With Whom are you Dealing for your Investment Services?* and *The Investor Guide to OSC Resources and Services*. Extensive media coverage resulted in the OSC receiving nearly 1,000 requests for Investor Education Kits in less than two weeks.

An advertorial was published in the May issue of *Reader's Digest* magazine, reaching over 400,000 subscribers in Ontario. Using a real-life case study involving a scammed retired law enforcement officer, readers learned how to protect themselves from investment fraud.

To reach young people interested in investing, the OSC harnessed the power of the Web. The Hey Kids! subdomain of the OSC's Website was launched providing information, interactive games and quizzes, video clips and a downloadable screen saver. Inserts into *Owl*, *Chirp* and *Chickadee* kids magazines directed children and their parents to Hey Kids!

Spot the Bull or Bear the Consequences, a self-diagnostic interactive quiz went live on the Investor Resources page of the OSC Website allowing participants to assess their investment knowledge and behaviour, comfort with risk taking and vulnerability to fraud.

"To reach young people interested in investing, the OSC harnessed the power of the Web."

At the national level, the Canadian Securities Administrators' Investor Education Committee released a series of French and English articles to 1,100 community newspapers across the country through the Canadian Community Newspaper Association. Topics covered included leveraging, do-it-yourself investing and offshore Internet scams. The committee also partnered with CBC's television show Street Cents to produce a segment that encourages young viewers to start thinking about investing.

Working with partners helped to broaden this year's outreach campaign. The OSC co-sponsored seminars in Niagara Falls, Sarnia, London and Toronto with the Canadian Association for the Fifty-Plus, the Association for Investment Management and Research, the Niagara Falls Public Library and the Toronto Reference Library. Employees from the various departments of the OSC also volunteered to deliver Junior Achievement's Personal Economics, Investing in Me program to 17 classrooms across the Toronto area.

The third annual Investor Forum held by the Toronto Stock Exchange gave 1,200 investors the opportunity to listen to leading financial experts and to pick up information packages from exhibitors, including the OSC. The Investor Learning Center hosted two seminars in Toronto focusing on investor protection. IFIC held an Alternative Products Seminar in addition to its Members Breakfast to Kick off Investor Education Week. Leading industry associations and professional organizations including the Canadian Bankers Association, the Canadian Investor Protection Fund, the Investment Dealers Association and the Institute of Chartered Accountants of Ontario provided promotion of Investor Education Week events on their web sites or through their own press releases.

For more information, please contact **Terri Williams**, Manager of Investor Education, (416) 593-2350.

Phoney Website Alerts Investors to Internet Hazards

A phoney Website established by the OSC demonstrates the pitfalls of making investment decisions based on unverifiable information found on the Internet.

"The lesson from this exercise is that people should not trust information on the Internet unless they have confidence in the source."

The OSC site, NoRiskWealth.ca, was launched on January 22, and promised investors unusually high returns with little or no risk. In the six weeks the site was operational, it received more than 16,000 hits with over 1,000 visitor sessions.

According to OSC Director of Enforcement, Michael Watson, a number of people were prepared to invest thousands of dollars based on unsubstantiated information found on a website, and others asked for additional information. "The lesson from this exercise is that people should not trust information on the Internet unless they have confidence in the source."

The project also tested the ability of securities regulators to monitor the Internet. Four different regulators, including OSC staff who were not aware of the project, discovered the site just days after it went live. The OSC gathered valuable information about potential traffic to other Websites. For example, about 60 percent of the website visitors came from the US, 30 percent from Canada and 10 percent from other countries.

In order to ensure the authenticity of the site, the OSC modelled the content on scams they have observed, and promoted it using the same tactics generally employed by Internet con artists. The Website was operated by an outside contractor, and configured so that the OSC does not have access to information about individuals who visited the site.

For more information, please call **Michael Watson**, Director, Enforcement Branch, (416) 593-8156 or **Colin McCann**, Investigator, Enforcement Branch, (416) 593-8285.

OSC Shares Its Expertise With Regulatory Agencies From Around The World

The OSC has earned a solid reputation amongst securities officials around the world for the breadth of its regulatory expertise. Over the past year, the OSC provided training programs to securities officials from Latin America, Eastern Europe, the Middle East and Asia.

Executives from the Securities and Exchange Commission of Brazil were extensively briefed on investor education initiatives with the assistance of the Toronto Stock Exchange, the Investor Learning Centre, the Canadian Securities Institute and the Canadian Depository for Securities Inc.

With the assistance of staff from the Canadian Depository for Securities Inc., information technology specialists from the Securities Commission of Malaysia, the Israel Securities Authority and the Financial Supervisory Service of Korea were briefed on regulatory issues and technological requirements pertaining to the electronic filing of disclosure documents.

The OSC developed a comprehensive training program on corporate governance for a joint delegation from the Federal Russian Commission on Securities and the City of Moscow's Office for Economic Development. The program was delivered with the assistance of York University's Schulich School of Business, the Law Firm Davies Ward Phillips & Vineberg LLP, the Institute of Corporate Directors, the Toronto Stock Exchange, the Export Development Corporation, the Toronto International Centre for Financial Sector Supervision and the Deposit Insurance Corporation of Ontario.

For more information, please contact **Jean-Pierre Maisonneuve**, Corporate Communications Officer, (416) 595-8913.

Investor *e*·ducation Fund

The Investor *e*·ducation Fund was created to help individuals invest responsibly and independently by learning how to make use of financial information, services and advice.

It will pursue this goal - either alone or in partnerships - by developing educational resources relevant to investors at every stage of life, industry and community partnerships, and research. The Fund also has access to the knowledge of the OSC as it works to narrow the gap between investment activity and investment knowledge.

An outstanding Board of Directors has been assembled to provide leadership to the Fund. It is comprised of women and men with diverse expertise in the financial services industry, education, and securities regulation:

Kerry D. Adams, FCA
Ms. Adams is Chair of the Board of Directors, an OSC Commissioner and President of the financial consulting firm K. Adams & Associates.

Julia Dublin
Ms. Dublin is Senior Legal Counsel in the OSC's Capital Markets Branch.

Dr. Lynette Gillis
Dr. Gillis is an educational psychologist and President of Learning Designs Online.

Robert (Robin) W. Korthals
Mr. Korthals is an OSC Commissioner and a Past President of the Toronto-Dominion Bank.

Claude R. Lamoureux
Mr. Lamoureux is President and CEO of the Ontario Teachers' Pension Plan Board.

Elaine Wyatt
Ms. Wyatt is a Senior Investor Relations Consultant with Blunn & Company Inc.

Nancy Stow
Ms. Stow is the Executive Director of the Fund.

"An outstanding Board of Directors has been assembled to provide leadership to the Fund. It is comprised of women and men with diverse expertise in the financial services industry, education, and securities regulation."

Since its incorporation in August 2000, the Fund has been active in three key areas:

Train-The-Trainer Initiatives
Expanding its partnership with the Toronto Stock Exchange to develop a new teaching tool called Taking Stock in Your Future.

Research
Launching independent research projects on financial literacy, financial information and financial education to identify future opportunities, initiatives and funding criteria for the Fund.

Implementing with York University's Schulich School of Business a public policy research program pertaining to financial services.

Promoting Ethical Practices
Promoting ethical practices through a three-year sponsorship of Carleton University's Kroeger Awards in Ethics.

CCMA News

A publication of The Canadian Capital Markets Association

Volume 5 • June 2001

"T+1 is a goal that the entire investment industry in Canada must support. Frankly, the real goal should be T+0. We should not be content with reaching T+1. T+1 is analogous to going to your ATM today and having to come back tomorrow to get the money. While this is a marked improvement over today's standard of T+3, having this exposure — cash and securities in 'no man's land' until settlement — is unacceptable."

— Claude Lamoureux,
President and Chief Executive Officer,
Ontario Teachers Pension Plan Board

"Where one solution will do, you can rely on the securities industry to provide two. In fact, with the Global Straight Through Processing Association and Omgeo fighting to lead the way in the area of central matching, it appears that the industry is trying to kill one bird with two stones."

— Jo McGinley,
"Double Jeopardy", *Global Investor*

In This Issue

Institutional Trade Processing White Paper: Options and Responses

The Institutional Trade Processing White Paper, issued on March 8 for a two-month comment period, sets out institutional trade processing issues and problems, a blueprint for clearing and settlement in a T+1 environment and an anlaysis of five options to deliver T+1: a "New Design" as a stand-alone option or with the Financial Markets Company (FMC); two Global Straight Through Processing Association (GSTPA) options; and the option of another vendor such as Omgeo, the partnership between the Depository Trust & Clearing Corporation (DTCC) and Thomson Financial. The CCMA received a number of responses to the White Paper. The Institutional Trade Processing Working Group reviewed them prior to providing a summary to the CCMA Core Group. The summary of the responses and proposed action will be posted on the CCMA Web site.

Drawing conclusions about what option is best for Canada has been difficult due to the lack of detail surrounding some of the models — e.g. whether they have the key functionality that the Canadian marketplace wants, their cost, etc. There has been progress made in the analysis of all options. As the White Paper states, whatever option or options are selected for the Canadian market, they will likely be required to interoperate. This is a hot topic in the U.S., where discussions about interoperability between the GSTPA and Omgeo are currently in progress.

Global Straight Through Processing Association

The GSTPA is confident that the pilot of its multilateral interconnectivity matching utility will start in Q2 2001 and run until full production starts, expected in Q4 2001. Despite earlier indications that the GSTPA model would provide a link to depositories, Mr. Crosby, GSTPA's Acting CEO, confirmed at an Orlando conference that the GSTPA model is a post-trade and *pre-settlement* model, although a link to DTCC is likely. As well, the model currently lacks a standing instructions database (SID), although it can link to such databases. The key question of pricing was addressed with an announcement May 15. The announced pricing for international trades would make the GSTPA option expensive if the model was to be applied to domestic transactions. For more information, visit *www.gstpa.org* and *www.axion4.com*.

Omgeo

The U.S. Securities and Exchange Commission (SEC) recently issued an order to exempt the new Thomson/DTCC joint venture — Omgeo — from full SEC registration. The approval was granted providing that Omgeo and other virtual matching utilities for the U.S. market meet a number of "interoperability" conditions such as price transparency, fairness and reasonability, use of industry standards, sequential transaction processing, equal access and neutral industry involvement. With the regulatory quiet period over, Omgeo can now discuss options with interested parties. For more information, visit the Omgeo Web site — *www.omgeo.com*.

"Everyone that plays a role in initiating, processing or settling a trade will be affected by the move to T+1 and must be engaged early. Systems enhancements will be necessary by brokers, custodians and asset managers alike, and all must do their part. In this age of advancing technological capabilities, the types of credit and counterparty risk exposure that lagging settlement periods impose on our industry are unacceptable and entirely avoidable.

Today, to facilitate our own internal processes, we expect our external asset managers to provide us with trade information on the same day as they initiate the trade. This level of readiness means that these asset managers are well positioned for the move to T+1. We will expect this same level of commitment to providing same-day information from all our suppliers and partners — it will be a prerequisite to the industry achieving T+1 efficiency."

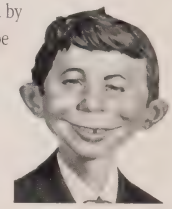
— Claude Lamoureux,
President and Chief Executive Officer,
Ontario Teachers Pension Plan Board

Workshop — T+1 Institutional Trade Processing White Paper: Canada's Options

At the CCMA workshop held on April 19th, broker/dealer Tom White of Merrill Lynch, investment manager David Sexsmith of Sceptre and custodian representative Savie Fiorini of CIBC Mellon made presentations and answered questions on issues surrounding the current institutional trade process, what T+1 means to their respective industry sector and what changes are needed to be ready to settle on T+1. Presentations and responses to delegate questions are posted on *www.ccma-acmc.ca*. The key message from the workshop was that *no one* who has an interest in the securities industry should think that they have nothing to do to prepare for the move to T+1.

What Me Worry?

Do you think that, because you use a service provider, you will not be affected by T+1? Not by a long shot. For example, brokers using service bureaus will be affected if the service provider they use isn't ready for T+1. Pension plan sponsors will be affected in some manner, whether they manage all, some or none of their assets internally.


Trademark, Time Warner ©

If you outsource, what inquiries should you make of your service bureau, investment managers, custodians or other suppliers?

Ask them as many of the following questions that apply:

- Do you have a T+1 project plan and project office/officer?
- Have you completed the CCMA T+1 Readiness Checklist and what is the current status of your T+1 plan?
- Are you recording straight-through processing (STP) rates? Are you eliminating phone calls and faxes as ways to communicate trade information?
- Will your systems operate on a real-time basis for trade order and settlement processing by 2003 for testing and by 2004 for final implementation?
- Do you expect to be 100-per-cent-ready for T+1 by June 2004?
- What is your greatest concern about the move to T+1?
- Do you foresee an increase or decrease in fees or expenses as a result of T+1?

Then add some questions specific to your area of interest. For example, pension plan sponsors can also ask their investment manager:

- Will you be able to electronically allocate trade orders among accounts in a timely manner on trade date?
- What are the T+1 implications on our securities lending arrangements?
- Will changes be made to daily operations to accommodate T+1 impacts on daily cash flows (contributions, expenses, benefit payments, income payments) so that the fund is fully invested at all times?
- Will compliance, analytic, performance and reporting systems, both internal and available for clients (both hard copy and online), capture all activity in a T+1 environment?

What's New in the U.S.

Consolidated Industry T+1 Project Plan

In April, consultants working for the Securities Industry Association (SIA) summarized SIA T+1 Steering Committee subcommittee workplans to serve as a blueprint for moving to T+1. The deliverables completed were:

1. Consolidated project plan incorporating the individual project plans of 17 SIA subcommittees, the Depository Trust & Clearing Corporation, Omgeo, the Global Straight Through Processing Association and The Bond Market Association
2. Milestone and dependency report among plans tying back to the SIA's original ten "building blocks"
3. Project management framework

The consolidated plan includes 1,094 tasks and 162 milestones. It categorizes 63 milestones as key and identifies 43 dependencies within and between the tasks of the subcommittees and other entities.

Co-ordination through T+1 Project Manager

The SIA has written to managing executives of its members asking for the appointment of a T+1 Project Manager similar to what the SIA did for the Year 2000 initiative. As well, anyone accessing the T+1 pages on the SIA Web site is asked to appoint a T+1 Project Manager. T+1 Project Managers will be the focal point for T+1 communication of the most recent information and for purposes of cross-industry co-operation. As of early May, 300 project managers had signed up on the SIA Web site.

Legal Issues

The SIA has identified over 100 rules and other changes required for the Securities and Exchange Commission, stock exchanges, Depository Trust & Clearing Corporation and others — more than 20 organizations in total. The desired changes can be categorized as mandatory trade matching and interoperability, immobilization, settlement cycle reductions, separation of disclosure from settlement, electronic delivery of documents and the payment process.

Some of the key proposed rules are:

Securities and Exchange Commission Rules

- All equity and fixed-income trades must be locked in and matched prior to submission to a central matching utility for settlement.
- Delayed and alternative (electronic) delivery of final prospectuses should be allowed.
- A broker/dealer may not sell a security that provides payment and delivery later than T+1, except for IPOs, which may require more time.
- Brokerage accounts with standing instructions for the issuance of a certificate should be changed to hold securities in street name or in a direct registration system position.
- All U.S. companies issuing new securities should be required to issue them in book-entry form.
- Transfer agents should be required to process all routine and non-routine items within one day of receipt.

New York Stock Exchange Rules

- Rules should be amended to require all listed and unlisted securities to be made depository-eligible on or prior to issue date and require all receipt/delivery versus payment domestic settlements in international securities to be made in a depository environment.
- All corporate action information, including reorgs, dividend payments, bond interest payments, etc., should be delivered by the company and the agent to the depository on announcement date via electronic communication.

National Association of Securities Dealers Rules

- Changes should be made requiring T+1 settlement.
- Certificates should be in book-entry form or received physically before sales can be executed (this can include deposit with a broker/dealer with a custodian bank in nominee name or in a direct registration system account) and no sell orders should be processed until shares have been immobilized.

SIA Standards/Codes of Practice Subcommittee

The subcommittee's mandate is to develop a code of practice that supports the T+1 framework through four working groups:

Market Practice: Defining the business elements to be used within each marketplace by product (e.g., trade execution and confirmation, trade settlement, settlement reconciliation, corporate actions).

Business Practice: Defining the best practice processes for each product using the market practices described above (e.g., timing of information delivery, associated alerts, error correction rules).

Standards: Identifying the actual protocols and syntax for communications to be used.

Conformance: Developing a framework for ensuring that participants adhere to the rules and required business practices of the T+1 framework.

The CCMA is a member of the subcommittee and working groups whose current activities are collecting best practices documents from other T+1 subcommittees and producing white papers on the four subtopics. Drafts are expected to be presented and discussed in September, with the final SIA Market Practice, Standards and Conformance White Papers to be presented in December and the Business Practices White Paper targeted for February 1, 2002.

What's New Around the World

Australia, having moved from T+5 to T+3 in February 1999, is now looking at T+1. The Australian Securities Exchange (ASX) released a discussion paper on issues to be resolved if Australia were to move to T+1. The exchange called a meeting of banks, brokerages, investment managers, custodians and others in Sydney on May 7 to discuss shortening the trade settlement cycle. The ASX discussion paper refers readers to the Securities Industry Association and CCMA Web sites.

People in other parts of the world also have an interest in T+1 and Canada's efforts as witnessed by requests for information from Finland, Germany, the West Indies and Australia, and growing numbers of requests from the United States.

Manual Labour

Committee members have been researching the extent of certificated transactions in trading. One Elimination of Certificates Working Group member reviewed trade volumes over a recent six-month period and found that the volume of certificated settlements was less than one per cent of settlements processed. Another member surveyed a single day and learned that the total value of retail trades with certificates represented 0.03 per cent of the total of all its sell transactions.

T+1 and the Canadian Payments System

There is an integral relationship between the securities transfer and payments systems. The Canadian Payments Association's (CPA's) Large Value Transfer System (LVTS), largely collateralized by securities in the Canadian Depository for Securities Limited (CDS) Debt Clearing Service (DCS), is used by participants to make or receive payments to or from DCS. However, certain types of payments (interest and maturity entitlements) are still made by cheque, reducing efficiency and increasing risk.

The CPA Board of Directors has approved, in principle, a plan to accelerate migration of payments from the Automated Clearing Settlement System (ACSS), that clears cheques and paper instruments, to LVTS. A Migration Implementation Task Force — with representatives from the CPA's LVTS and ACSS committees and other large-value issuers — has been established to:

- address the impact of the proposal on CPA members and issuers of large-value payments such as governments and corporate entities
- identify issues particular to cheques, automated funds transfers (AFT) or electronic data interchange (EDI) payments
- consider requirements for communications with clients
- identify possible system and procedural changes for members.

The task force is considering phasing in a threshold (e.g., setting a $25 million ACSS cap initially and decreasing it over time to $5 million) or identifying the final target — for example, $5 million — and putting this amount in place as the ACSS cap right away. The task force hopes that, by April 2002, an initial threshold will be implemented and large paper-based payment items over that amount will have to be migrated to LVTS. A separate timetable is being considered for migrating electronic items such as AFT and EDI transactions. The task force has been asked to table a full implementation plan for approval by the CPA Board of Directors by September 2001.

T+1 in the News

April 6, 2001 — The Canadian Securities Administrators (CSA) issued Notice 33-401 on the Canadian Capital Markets Association T+1 White Paper. The release concludes: "The Canadian Securities Administrators ("CSA") support the move to T+1 and applaud the CCMA's initiatives in this regard. Market participants are encouraged to comment on the T+1 White Paper."

April 16, 2001 — David Brown, Q.C., Chair of the Ontario Securities Commission gave the kick-off speech at Investor Education Week. The theme was "Invest Time Before You Invest." Commenting on the move from T+3 to T+1, he said: "Aside from the pros and cons, there is a simple reality. Any move to shift to a one-day settlement cycle in the United States would be hard for Canada to ignore. After all, about 15 per cent of companies listed on the TSE are cross-listed on a U.S. exchange. Those companies represent about 40 per cent of TSE trading volume and 60 per cent of its trading value. This is an issue we are going to hear more about. I want to urge the securities industry to support this important initiative."

April 25, 2001 — Carmen Crépin, Chair of the Commission des valeurs mobilières du Québec spoke at Le Cercle de la finance internationale de Montréal. She said: "The T+1 Project in Canada is co-ordinated by the Canadian Capital Markets Association, a non-profit organization established last August by Canadian financial industry stakeholders. The Quebec Securities Commission takes part in the Association's activities and I would like to point out the importance, to every industry stakeholder, of getting involved immediately in this project."

Committee Round-up

Institutional Trade Processing Working Group (ITPWG): Gary Stephenson, Chair of the ITPWG, reported that the committee was reviewing comments received during the two-month comment period on the Institutional Trade Processing White Paper (details to follow in the next *CCMA News* edition). In addition, ITPWG discussed benchmarking statistics and the start to developing a T+1-focused code of best practices and market standards. With respect to the latter, the ITPWG hopes to build on work undertaken last year by the Canadian Securities Market Practice Group.

Retail Trade Processing Working Group (RTPWG): While the RTPWG's mandate is to deal with all retail products, it formalized five subcommittees by mutual fund sector to address the specific T+1 issues faced by mutual fund dealers, manufacturers, brokers, intermediaries and CDS/FundSERV. Committee membership expanded to include independent mutual fund dealers, insurance/segregated fund representatives and observers to ensure broad representation from all groups. RTPWG Chair Jerry Beniuk said that the high-level workplan for 2001 is on track with work flow diagrams for nominee, intermediary, mutual fund dealer, broker and physical certificates being refined and discussed more broadly within the relevant IFIC, IDA, etc. committee structures to ensure that these are an accurate and acceptable reflection of details and proposed changes to achieve settlement on T+1. As well, a preliminary list of mutual-fund-related T+1 challenges in the Mutual Fund Dealers Association rules, Securities Act, National Instrument 81-102, Bills C-5, C-6, Bill 85 and the legal requirements for issuing certificates under the Quebec Civil Code and Quebec Securities Act have been itemized and will be reviewed further.

Elimination of Certificates Working Group (EOCWG): Bill Brolly, Chair of the EOCWG, advised that a working paper on legended and constrained shares has been drafted and is being reviewed. The EOCWG had also identified a number of issues or questions that may require legal or regulatory solutions and provided them to the Legal/Regulatory Working Group. Key brokers and custodian concerns have been identified. Finally, a paper on the industry impact on transfer agents has been prepared and distributed to members of the Security Transfer Association of Canada (STAC). These items form input into the EOCWG's White Paper due in October.

Legal/Regulatory Working Group (L/RWG): Tom Marley, Chair of the L/RWG, reported that legal counsel, engaged on a project basis, is reviewing and preparing a response to issues submitted by the EOCWG. Legal counsel met with the Ontario Securities Commission to discuss the Canadian Securities Administrators (CSA's) strategy on T+1 and to review mandatory entitlement processing and constrained shares. The L/RWG is following up with securities commissions, the Toronto Stock Exchange, Investment Dealers Association and other self regulatory organizations for their reviews of what rules, regulations or other requirements will have to be updated to meet T+1.

Communications and Education Working Group (CEWG): Chair of the CEWG, Eric Pelletier, said that the CEWG's next big effort is preparing to publicize the Institutional Trade Processing White Paper responses and next steps. The CEWG is also looking at a poll and other survey approaches to assess T+1 knowledge and areas at which to direct education efforts. As well, with the growing volume of material on the Web site and being prepared by CCMA working groups, the CEWG is working to expand the Web site. New content will include frequently asked questions, a generic article, presentation and speech that industry firms can use to inform their employees and clients.

CCMA News...

New on www.ccma-acmc.ca:
The Committee workplans have been updated. Select *Committees* on the navigator and click on the *workplan* link to go to the latest status updates.

The April 19 White Paper presentations and questions left unanswered when the workshop concluded have been posted. Check out Conferences/Events on the Web site navigator.

Keep watching the Web. The CCMA Web site www.ccma-acmc.ca is outgrowing its current structure so we'll be updating it soon.

Comments

We welcome your views on this issue of CCMA News and your ideas for future issues. Send comments and questions regarding the newsletter, CCMA and the T+1 initiative to:

Canadian Capital Markets Association
Attention: Rosa Spirt
85 Richmond Street West
4th Floor
Toronto, Ontario
M5H 2C9
Tel: 416-815-2044
Fax: 416-365-9625
E-mail: info@ccma-acmc.ca

Funding will come from monies collected through settlements in OSC enforcement proceedings. A process will be developed and implemented to ensure the best educational return for the funds.

For more information, please call **Nancy Stow**, Executive Director, (416) 593-8297.

Staff Changes

CAPITAL MARKETS BRANCH

Randee Pavalow was appointed Deputy Director of Capital Markets and will assist with the day-to-day administration and the planning of the Branch. Randee will continue to act as the Manager of the Market Regulation Team.

Rebecca Cowdery was appointed Manager of Investment Funds Regulatory Reform and will focus her attention on major investment funds policy projects such as the mutual fund governance project.

Paul Dempsey was appointed Manager of the Investment Funds Team.

Gina Sugden was appointed Manager of the Registrations Project Office. In that role, Gina will act as a technical expert and resource to the Team and become involved in special project work such as the mapping of processes within the Team to allow the implementation of the National Registration Database project and creating an education and training program for Registration staff.

Peggy Dowdall-Logie was appointed Manager of the Registrant Regulation Team which combines the former Registrant Legal Services and Registration Teams.

COMMUNICATIONS BRANCH

Terri Williams will be assuming the position of Manager, Investor Education. Terri joins us from a leading venture capitalist where she was Communications Director. Previously, she spent two years managing media and public relations, corporate communications and investor education programs for the Investment Funds Institute of Canada.

INVESTOR *e*•DUCATION FUND

Nancy Stow has been appointed as the Executive Director of the newly created Investor *e*•ducation Fund. Nancy was previously Manager of Investor Education.

T+1 White Paper Released For Comments

A working group formed by the Canadian Capital Markets Association (CCMA) recently released a "T+1 White Paper." By mid 2004, the Canadian and US securities industry plan to shorten the settlement period to one day after the date of trade (T+1) from the current practice of T+3.

"The Canadian Securities Administrators support the move to T+1 and applaud the CCMA's initiative in this regard. Market participants are encouraged to comment on the T+1 White Paper."

Among the various working groups formed by the CCMA board of directors to work on the T+1 project is the Institutional Trade Processing Working Committee (ITPWC). The ITPWC is seeking input for the changes that will be required to move to T+1, in particular the trade communications flow been fund managers, dealers, custodians and CDS.

The White Paper describes various options for a type of straight-through processing (STP) model for Canada, and pro-

DIALOGUE WITH THE OSC 2001 CONFERENCE

PRELIMINARY NOTICE AND EARLY REGISTRATION

Monday, November 19th & Tuesday 20th, 2001

SHERATON CENTRE HOTEL
123 QUEEN STREET WEST, TORONTO

Registration Fee: $395 (*including G.S.T.*)

To register, please contact
The Ellis Riley Group
T. (416) 593-7352 (800) 360-0493 F. (416) 593-0249
info@ellisriley.on.ca

To obtain a detailed program, call
The OSC Contact Centre at
T. (416) 593-8314
or visit the OSC Website at www.osc.gov.on.ca

poses a new design for institutional trade communications in a T+1 environment. STP is the completion of pre-settlement and settlement processes based on trade data that is manually entered only once into an automated system. The paper outlines the process flows for the preferred STP design and highlights the changes that will be required by fund managers and their suppliers, dealers, custodians and CDS.

The Canadian Securities Administrators support the move to T+1 and applaud the CCMA's initiative in this regard. Market participants are encouraged to comment on the T+1 White Paper. The CSA are interested in reviewing the comments received by the CCMA on which of the STP models described in the White Paper would best achieve the efficiency and global competitiveness of Canada's capital markets.

The T+1 White Paper is available on the CCMA's Website at www.ccma-acmc.ca

For more information, please call **Maxime Paré**, Senior Legal Counsel, Market Regulation, (416) 593-3650.

OSC Bulletin, April 6, 2001, Volume 24, Issue 14, Page 2069.

CANADIAN SECURITIES ADMINISTRATORS

A summary of recent national initiatives from the Canadian Securities Administrators (CSA). The CSA is comprised of the thirteen provincial and territorial securities regulators.

CSA Draft Policy on Disclosure

The Canadian Securities Administrators (CSA) have published for comment a draft policy statement that provides guidance and best practices on corporate disclosure, and assists public companies in avoiding selective disclosure. The comment period will end July 25, 2001. Longstanding legislative provisions on tipping already prohibit selective disclosure, which occurs when an issuer discloses material nonpublic information to a few individuals or entities and not broadly to the investing public.

"Longstanding legislative provisions on tipping already prohibit selective disclosure, which occurs when an issuer discloses material nonpublic information to a few individuals or entities and not broadly to the investing public."

However, given public concerns about some industry practices (e.g., closed conference calls with analysts), regulators are providing an interpretation of the tipping provisions and practical guidance to assist public companies in complying with the law.

The draft policy recommends public companies consider implementing the following best disclosure practices:

- Establish a written disclosure policy that promotes informative, timely and broadly disseminated disclosure of material information to the market place.
- Establish a committee of company personnel (or an individual with senior rank) to monitor the effectiveness of the company's disclosure policy.
- Limit the number of people authorized to speak on behalf of the company to analysts, the media and investors.
- Adopt an "open access" policy for analyst conference calls by permitting any interested party to listen by telephone and/or through a Webcast.
- Establish a policy on commenting on draft analyst reports. Issuers should recognize that there is a serious risk of violating the tipping provisions if any direct or indirect earnings guidance is given.
- Observe a "quiet period" around the end of the quarter and prior to the release of quarterly earnings announcements.
- Adopt an insider trading policy to monitor the trading of insiders in the company's securities. The policy should include trading "blackout periods", which may mirror quiet periods.
- Ensure the company's Website is up to date and accurate and use current technology to improve investor access to corporate information.
- Do not participate in, host or link to internet chat rooms or bulletin boards.
- Adopt a "no comment" policy on market rumours that are not attributable to the company and ensure that the policy is applied consistently. If the rumours relate to information that has leaked, the CSA recommends companies disclose the information broadly and on a timely basis.

The CSA Committee believes that these recommendations will help public companies in navigating between business pressures and legislative requirements. The policy statements are not prescriptive, and should be implemented flexibly to fit the circumstances of individual companies.

For more information, please call **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245.

OSC Bulletin, May 25, 2001, Volume 24, Issue 21, Page 3301.

Mining Technical Advisory and Monitoring Committee

The CSA has established a Mining Technical Advisory and Monitoring Committee (MTAMC) to provide advice to the CSA on issues relating to the application of National Instrument 43-101.

The MTAMC will be co-chaired by Deborah McCombe, Chief Mining Consultant of the OSC, and Adrianne Marskell, Senior Legal Counsel of the British Columbia Securities Commission. The Committee will also include nine individuals active in the mining and mineral exploration industry across Canada. Representatives from the Toronto Stock Exchange and the Canadian Venture Exchange will sit on the MTAMC as observers.

For more information, please call **Deborah McCombe**, Chief Mining Consultant, (416) 593-8151.

Universal Market Integrity Rules

On April 20, 2001, the Canadian Securities Administrators (CSA) published a notice requesting comment on the proposed Universal Market Integrity Rules (UMI Rules). The UMI Rules are a joint initiative of the Toronto Stock Exchange Regulation Services (RS) and the Canadian Venture Exchange Inc. (CDNX) designed to harmonize their market integrity rules.

In response to the CSA proposal on alternative trading systems (ATS), the Toronto Stock Exchange and the Investment Dealers Association of Canada (IDA) are proposing to create a stand alone market regulator. Upon recognition of the market regulator as an SRO under securities legislation, RS and CDNX propose that:

- The market regulator adopt the UMI rules; and
- The TSE and CDNX delete their existing market integrity rules.

Comment is requested on a number of key issues, including:

- Are the scope and content of the UMI rules appropriate?
- Should the market regulator require that an ATS be responsible for training its non-dealer subscribers on the applicable rules?
- Should the UMI rules replace all or part of the CSA Trading Rules published for comment at the same time as the July 2000 ATS proposal?
- To what extent are the UMI rules applicable to the debt and derivatives markets and OTC trading?

For more information, please call **Susan Greenglass**, Legal Counsel, Market Regulation, (416) 593-8140 or **Cindy Petlock**, Legal Counsel, Market Regulation, (416) 593-2351.

OSC Bulletin, April 20, 2001, Volume 24, Issue 16, Page 2555.

Upcoming Speaking Engagements by OSC Commissioners and Staff

JULY 17-19, 2001
Regulation & Compliance for Financial Institutions Conference (Toronto) Institute for International Research

Julia Dublin, Senior Legal Counsel, Corporate Finance Branch
"New Proficiency Standards for Financial Planners"
Krista Martin Gorelle, Senior Legal Counsel, General Counsel's Office
"New Developments in Securities Regulation"

JULY 25, 2001
Roundtable on Corporate Governance in Canada (Toronto) Atlas Information (Canada)

Paul Moore Q.C., Vice-Chair
"Corporate Governance in the 21st Century"
Susan Wolburgh Jenah, General Counsel
"The Interim Report of the Saucier Committee - Was It Hard-Hitting Enough?"

AUGUST 14, 2001
Canadian Corporate Counsels Association Annual General Meeting (Saskatoon)

Paul Moore Q.C., Vice-Chair
"Fair Disclosure"

AUGUST 23, 2001
Canadian Investor Relations Institute/Ivey School of Business Conference (London)

Susan Wolburgh Jenah, General Counsel
"Strategic Management of Investor Relations"

OCTOBER 2, 2001
6th Annual OSC/SEC Financial Accounting & Reporting Course Survey (Toronto) Infonex

John Hughes, Manager, Continuous Disclosure Team
"Interim Financial Reporting and Continous Disclosure"

OCTOBER 30, 2001
Securities Litigation Conference (Toronto) The Canadian Institute

Johanna Superina, Senior Legal Counsel, Enforcement Branch
"Regulatory Update: The Latest Decisions, Legislatives Changes and Expanding Vigilance - What Litigators Need to Know"

ENFORCEMENT

The following are summaries of recent enforcement proceedings and hearings before the Commission. For more information, please call the OSC at (416) 593-8314.

Proceedings Against Jack Banks and Larry Weltman

The OSC has commenced a proceeding against Jack Banks (aka Jacques Benquesus) and Larry Weltman, two directors and principals of LaserFriendly Inc. (otherwise known as Gaming Lottery Corporation, GLC Corporation and GalaxiWorld.com). Shares of the company traded on the TSE from August 1993 to July 1998.

Staff of the Commission allege that Banks and Weltman authorized the company to participate in a program whereby the company would issue share certificates, although not actually issue the underlying shares. Staff allege that Banks and Weltman knew or ought to have known that improper use might be made of these share certificates, and that they failed to ensure that sufficient controls were in place to avoid any improper use. In addition, Staff allege that Banks and Weltman pleaded guilty in the State of New York to a felony relating to fraud involving the shares of the company(although unrelated to the program described above).

OSC Bulletin, May 11, 2001, Volume 24, Issue 19, Page 2991.

Paul Gordon, Former Salesperson of CCI Capital Canada Limited

The Commission held a hearing to consider a proposed settlement agreement between Staff and Paul Gordon, former salesperson of CCI Capital Canada Limited on April 25, 2001.

Staff allege that Amber Coast Resort Corporation, a corporation organized pursuant to the laws of Turks and Caicos Islands, created two offerings for its securities which relied on separate exemptions from the prospectus and registration requirements of the Act. No prospectus for Amber Coast was ever filed with or receipted by the Commission.

Staff further allege the following: that on September 1, 1998, Gordon's sponsor, CCI, entered into an agreement to place $200,000 (U.S.) worth of units of Amber Coast by September 30, 1998 and an additional $400,000 (U.S.) worth of units by November 30, 1998 in exchange for fees and use of a luxury villa. Although CCI was never registered as a limited market dealer, CCI encouraged its sales representatives, including Gordon, to sell units of Amber Coast to their clients. Gordon sold units of Amber Coast to two of his clients. In total, those clients invested $20,000 (U.S.) in Amber Coast. CCI paid referral fees of 5% of the monies invested to Gordon by way of commission cheques. As he was in the business of trading in securities, Gordon required registration to sell limited market products in order to sell units of the Amber Coast offering. Gordon was not licensed to sell limited market Products, thus his sales to clients constituted trading without registration. The hearing on April 25 was to consider a proposed settlement agreement that:

(a) the registration of Paul Gordon be terminated or suspended or restricted for such period as the Commission may order;

(b) Gordon cease trading in securities permanently or for such period as the Commission may order;

(c) Gordon resign any positions Gordon holds as a director or officer of an issuer;

(d) prohibits Gordon from becoming or acting as a director or officer of any issuer permanently or for such period as the Commission may order;

(e) Gordon pay the costs of the Commission's investigation and this proceeding;

(f) Gordon be reprimanded; and/or

(g) to make such other order as the Commission may deem appropriate.

OSC Bulletin, April 27, 2001, Volume 24, Issue 17, Page 2600.

Derivatives Services Inc. and Malcolm Robert Bruce Kyle

The Commission held a hearing on May 28, 2001 to consider an application by Derivative Services Inc. ("DSI") and Malcolm Robert Bruce Kyle ("Kyle") for review of the decisions of the Ontario District Council of the Investment Dealers Association of Canada dated June 28, 1999, December 13, 1999, May 5, 2000, June 29, 2000 and July 18, 2000 in respect of the Applicants. The application for the hearing and review was made by DSI and Kyle under the Commodity Futures Act (the "CFA").

The Commission dismissed the application in relation to the four rulings of the District Council dated June 28, 1999, December 13, 1999, May 5, 2000 and June 29, 2000. The Commission determined that it did not have jurisdiction to hear these matters, stating that the Applicants failed to file notice requesting review of these rulings within the time requirements prescribed under the CFA. The Commission further decided that it has jurisdiction to review the fifth ruling of the District Council dated July 18, 2000, and has reserved on this matter only.

OSC Bulletin, June 1, 2001, Volume 24, Issue 22, Page 3378.

RECENT SPEECH

Remarks by David A. Brown, Q.C., Chair, Ontario Securities Commission at the Investor Education Week Kick-off Breakfast

Sponsored by the Investment Funds Institute of Canada, April 23, 2001

The growth of securities investing is leading to new challenges. Between 1990 and 1999, the volume of securities traded in Canada grew by 350 per cent, while the value grew by 750 per cent. For a few moments, I'd like to focus on the impact that has on the settlement cycle.

Across Canada, at the end of each day, the value of trades outstanding ranges between 100 and 150 billion dollars. Over the current three-day settlement cycle, how much could be sitting in limbo waiting to be cleared and settled over any given day? Anywhere between $300 billion and half a trillion dollars.

"The argument is that it would eliminate two-thirds of the settlement cycle risk, and make markets more efficient. That includes reduced collateral requirements and operational risks, and increased productivity and liquidity."

For financial intermediaries, that's a lot of risk. For investors, that's a lot of capital. The time lag is especially important in an economy that seems to change by the hour. Yogi Berra once said that he didn't like playing outfield because "it gets late early out there." In a global economy, 72 hours is a lot longer than it used to be.

In the United States, the Securities Industry Association has been leading the move to cut settlement cycles from three days to one day – from T+3 to T+1. The argument is that it would eliminate two-thirds of the settlement cycle risk, and make markets more efficient. That includes reduced collateral requirements and operational risks, and increased productivity and liquidity. The automation required would also support 24-hour trading.

Aside from the pros and cons, there is a simple reality: Any move to shift to a one-day settlement cycle in the United States would be hard for Canada to ignore. After all, about 15 per cent of companies listed on the TSE are cross-listed on a U.S. exchange. Those companies represent about 40 per cent of TSE trading volume and 60 per cent of its trading value.

If Canada were to stand still while the U.S. industry shifted, the result would be higher settlement costs on this side of the border, opening the risk that Canadian companies would move their clearing and settlement to the United States.

But the shift from T+3 to T+1 would not be without costs. In the United States, the Securities Industry Association estimates a price tag of $8 billion, the bulk of which would be invested by broker-dealers.

This is an issue we're going to be hearing more about. I want to congratulate participants in the Canadian Capital Markets Association for conducting extensive research into the costs, benefits and alternative options for the Canadian industry. And I want to urge the securities industry to support this important initiative.

(OSC Proposes Further 20 Per Cent Cost Reduction)

market participants are expected to go down by approximately 20 per cent based on current revenues – a savings of more than $15 million a year.

The OSC has already reduced fees on three separate occasions over the past four years, saving market players a total of $20 million in the past year alone. Previous fee reductions included:

- In June, 2000, a 10 per cent across-the-board fee reduction;
- In August, 1999, a 10 per cent across-the-board fee reduction;
- In September, 1997, the elimination of the Secondary Market Fee and fees for certain registration terminations and transfers, a savings of $2 million.

To meet its objectives, the OSC's new schedule proposes the introduction of participation fees and activity fees.

Participation fees reflect the benefit derived by market players from participating in Ontario's capital markets. All market players, including reporting issuers, registrants and mutual fund managers, will be required to pay an annual participation fee. The participation fee would be based on a measure of the size of the market player, which is intended to serve as a proxy for the market player's use of the capital markets.

Activity fees reflect the direct cost for activities provided by OSC staff at the request of the market player. Examples include: reviewing prospectuses and applications for discretionary relief and processing registration documents.

The Concept Proposal recommends the fee schedule be re-evaluated every three years. The OSC expects to operate within budget, but if there is a surplus after three years, fees will be reduced accordingly for the next three-year period.

"The Concept Proposal published for comment by the OSC fulfills its commitment to streamline the current fee schedule and charge fees that better reflect the services provided."

A fee estimator has been added to the OSC Website to enable market players to determine what their annual fees would have been for prior years if the Concept Proposal had been in effect. Detailed examples of fees charged to market participants in 1999 and what those participants would pay under the proposed fee schedule can be found in Appendix B of the Concept Proposal.

The period for public comment on the proposal ended May 31st, 2001. Staff are currently reviewing submissions and expect to respond this summer.

For more information, please refer to the OSC Website under the "What's New" heading or call **Marrianne Bridge**, Senior Accountant, Advisory Services, Corporate Finance Branch, (416) 595-8907.

OSC Bulletin, April 6, 2001, Volume 24, Issue 14, Page 2108.

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Ontario Securities Commission
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Toronto, M5H 3S8
(416) 595-8913

The OSC Website, www.osc.gov.on.ca includes:
Information on the OSC; Investor Information,
Rules and Regulations, Enforcement Information
and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 5, Issue 3

SUMMER 2002

inside

Policy Encourages Cooperation during Investigations

A new "credit for cooperation" policy allows market participants to benefit from cooperating with OSC staff during an investigation 3

Study Identifies Deficiencies in Quarterly Reporting

A review of interim reporting found many instances of non-compliance with basic requirements 4

CSA Reviews Executive Compensation Reporting

The CSA have launched a review of how well publicly-traded companies comply with their executive compensation disclosure requirements 5

Frequently Asked Questions On Prospectus Rules

CSA staff have compiled a list of frequently asked questions in order to assist issuers, their auditors and their counsel in complying with the new prospectus regime 5

Investor Guide on Financial Disclosure

The Commission has published a new Investor Guide to help Ontario investors understand the sources of information available about public companies.....7

FEATURE

OSC Unveils "Fair Dealing Model"

The Ontario Securities Commission is considering significant changes to the way it regulates the relationship between the financial services industry and individual investors. OSC staff, in consultation with a group of investment industry leaders, have developed an outline of a new "fair dealing model".

The new framework would, among other things, seek to better define the rights and responsibilities of each party, reduce conflicts of interest in the provision of advice, and ensure greater transparency of adviser services, qualifications, compensation and other fees.

(continued on page 11)

INDEX

THE OSC WEBSITE, WWW.OSC.GOV.ON.CA INCLUDES:
INFORMATION ON THE OSC; INVESTOR INFORMATION; RULES AND REGULATIONS; ENFORCEMENT INFORMATION AND MARKET PARTICIPANTS.

Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

Members Sought for New Continuous Disclosure Advisory Committee

The Ontario Securities Commission is seeking volunteers for an advisory group it plans to establish. The Continuous Disclosure Advisory Committee (CDAC) will advise OSC staff on such matters as the planning, implementation and communication of its continuous disclosure review program, the impact of policy- and rule-making initiatives, emerging issues, and the OSC's procedures.

"The quality of corporate disclosure has become an increasingly significant topic for investors, and we as regulators recognize the importance of receiving regular, informed input from the marketplace," said OSC Manager of Continuous Disclosure John Hughes, who will serve as the initial chair of the CDAC. "We're particularly interested in hearing from the corporate officers who generate the disclosure and the investors who rely on it."

"The quality of corporate disclosure has become an increasingly significant topic for investors."

The CDAC is the latest instance of a committee of stakeholders being established by the OSC to provide input on securities regulation issues. Other groups are already in place to advise staff on compliance issues, the fair dealing model (see Feature, page 1), commodity futures, bond market transparency, institutional equity trading, and reducing the regulatory burden. In addition, the Securities Advisory Committee comments on legal, regulatory and market implications of OSC policies, operations, and administration. The new CDAC will be complementary to established committees, and will focus on continuous disclosure practices and procedures.

The CDAC will be made up of approximately twelve individual members who will serve two-year terms and meet four to six times each year. Members are expected to have extensive knowledge of continuous disclosure issues and a strong interest in securities regulatory policy as it relates to these issues.

For more information, please contact **John Hughes**, Manager, Continuous Disclosure Team, 416-593-3695, jhughes@osc.gov.on.ca.

New Members of the Securities Advisory Committee

In the January 4, 2002 edition of the OSC Bulletin, the OSC invited applications for positions on the Securities Advisory Committee (SAC). The SAC provides advice to the commission and staff on a variety of matters, including legislative and policy initiatives and important capital markets trends. The committee also identifies issues for the attention of the commission and staff.

The commission is pleased to announce new members who will participate on SAC for the next two years. The members are divided into two groups, based on whether they will join the SAC in June or October. The staggered start dates will ensure a smooth transition for the committee.

The new members who will join SAC in June are:
Robert Karp - Torys LLP;
Edwin Maynard - Paul, Weiss, Rifkind, Wharton & Garrison;
Robert Nicholls - Stikeman Elliott;
Dale Ponder - Osler, Hoskin & Harcourt LLP;
Thomas Smee - Davies Ward Phillips & Vineberg LLP; and
Philippe Tardif - Lang Michener

The new members who will join SAC in October are:
Robert Chapman - McCarthy Tétrault LLP (Ottawa);
Helen Daley - Kelly Affleck Greene;
Rosalind Morrow - Borden Ladner Gervais LLP;
Sheila Murray - Blake, Cassels & Graydon LLP;
Jeffrey Roy - Cassels Brock & Blackwell LLP; and
Cathy Singer - Ogilvy Renault

The OSC thanks the current members of SAC, listed below, who have served on the committee with great dedication over the last three years. Their advice and guidance on a range of issues have been very valuable to the commission.

Mark DesLauriers - Osler, Hoskin & Harcourt LLP;
Jeff Kerbel - Blake, Cassels & Graydon LLP;
Jay Lefton - Aird & Berlis LLP;
Neill May - Goodmans LLP;
David McIntyre - Osler, Hoskin & Harcourt LLP;
Paul Mingay - Borden Ladner Gervais LLP;
Patricia Olasker - Davies Ward Phillips & Vineberg LLP;
Simon Romano - Stikeman Elliott;
Constance Sugiyama - Gowling Lafleur Henderson LLP;
Grant Vingoe - Dorsey & Whitney LLP; and
Ava Yaskiel - Ogilvy Renault

For more information, please contact **Susan Wolburgh Jenah**, General Counsel, (416) 593-8245, swolburghjenah@osc.gov.on.ca.

Five Year Review Committee Draft Report Released

On May 29, 2002, the Five Year Review Committee released a draft report on Ontario's securities legislation. The draft report was the culmination of more than two years of meetings, research and deliberations concerning the current state of securities legislation in Ontario. The report considers events and legislative reform as of March 2002, providing a thorough review of many areas of securities law.

The Five Year Review Committee

Chair
Purdy Crawford, Counsel, Osler, Hoskin & Harcourt LLP

Members
Carol Hansell, Partner, Davies Ward Phillips & Vineberg LLP
William Riedl, President and Chief Executive Officer (Retired), Fairvest Securities Corporation
Helen Sinclair, Chief Executive Officer, BankWorks Trading Inc.
David Wilson, Co-Chairman and Co-Chief Executive Officer, Scotia Capital
Susan Wolburgh Jenah, General Counsel, Ontario Securities Commission

Staff
Anita Anand, Assistant Professor, Faculty of Law, Queen's University
Rossana Di Lieto, Senior Legal Counsel, General Counsel's Office, OSC
Krista Martin Gorelle, Senior Legal Counsel, General Counsel's Office, OSC
Janet Salter, Lawyer, Osler, Hoskin & Harcourt LLP

The following key topics are examined in the report:
1. The need for a single, co-ordinated approach to securities regulation in Canada.
2. The strengthening of the enforcement powers of the commission.
3. How to regulate in an increasingly technological world.
4. The need to introduce civil liability for secondary market disclosure by issuers.
5. The introduction of a system of governance for mutual funds.

The draft report was published in the May 31, 2002 edition of the OSC Bulletin and is also available on the OSC Web site at www.osc.gov.on.ca. Comments on the report should be addressed to:

Five Year Review Committee
c/o Purdy Crawford, Chair
Osler, Hoskin & Harcourt LLP
Barristers & Solicitors
Box 50, 1 First Canadian Place
Toronto, Ontario M5X 1B8
Fax: 416-862-6666
E-mail: pcrawford@osler.com

New Policy Encourages Cooperation With Staff During Investigations

The OSC has announced a "credit for cooperation" policy which allows market participants to benefit from cooperating with OSC staff during an investigation.

"This policy is intended to encourage firms and individuals to work with regulators to resolve compliance-related problems," said OSC Chair David Brown. "It gives us greater flexibility when the party has cooperated fully during the investigation and has self-policed, self-reported, and self-corrected the problems."

The policy enables OSC staff to choose one or more approaches to resolving issues, including:
- narrowing the scope of allegations;
- recommending reduced sanctions;
- submitting settlement agreements for approval by the Executive Director rather than a tribunal of the commission;
- obtaining an undertaking to avoid future violations of Ontario securities law;
- issuing a warning letter; and
- concluding the matter without taking any action.

The credit for cooperation policy was invoked April 9, 2002, when a settlement agreement was approved for the first time by the OSC's Executive Director, saving time and expense for all parties while sending a message of deterrence to the marketplace.

Thomas Vincent Hinke, the President and Chief Executive Officer of Thermal Energy International Inc. (TEI), failed to file insider reports relating to his transactions in TEI shares during the period from December 1996 to December 2000. In addition, some of these transactions constituted a distribution of TEI shares and therefore required either a prospectus to be filed or an exemption to be obtained. Hinke voluntarily disclosed his filing defaults and cooperated with OSC staff throughout its investigation.

In the settlement agreement, Hinke undertook to make all future required regulatory filings regarding his transactions in TEI shares in a timely manner, and made a voluntary contribution of $8,000 to the commission's Investor Education Fund.

"The fact that Mr. Hinke took the initiative in bringing this matter to our attention and cooperated fully with our staff was a key factor in our decision to offer an expedited procedure," said OSC Director of Enforcement Michael Watson.

The full text of the settlement agreement is available in the Enforcement section of the OSC website at www.osc.gov.on.ca. For more information, please contact **Michael Watson**, Director, Enforcement, 416-593-8156, mwatson@osc.gov.on.ca.

OSC Identifies Deficiencies In Quarterly Reporting

A recent review of quarterly, or interim, reports issued by public companies found many instances of non-compliance with basic requirements.

OSC staff reviewed the interim reports of 150 randomly selected issuers for the first quarter of fiscal 2001. Based on their findings, staff raised concerns with 77 of these issuers, with the following results:

- Seventeen companies re-filed their interim financial statements due to non-compliance. Some of these issuers had failed to include such basic components as an interim balance sheet or notes to the interim financial statements.

- Another 40 companies committed to improve disclosure in future filings. A common deficiency among this group was insufficient or poor quality information in the interim report's management discussion and analysis.

This review follows the OSC's recent implementation of rules to improve the historically poor quality of interim financial reporting. These rules require, among other things, that interim statements be reviewed by a company's board of directors or its audit committee before they are issued.

John Hughes, OSC Manager of Continuous Disclosure, called the results of the review "a concern." He said: "The results suggest a failure by management to maintain a current knowledge of requirements. They also raise questions about how boards of directors and audit committees carry out their responsibility to monitor and challenge management on financial reporting matters." More positively, Hughes noted awareness of the requirements appears to be increasing.

The complete results of the review are in OSC Staff Notice 52-713, available on the OSC's website at www.osc.gov.on.ca.

For more information, please contact **John Hughes,** Manager, Continuous Disclosure, 416-593-3695, jhughes@osc.gov.on.ca.

New OSC Commissioners

OSC Chair David Brown has announced two recent appointments to the Commission.

Harold P. Hands was the senior legal officer at Mackenzie Financial Corporation, one of Canada's largest investment fund organizations, from 1987 until his retirement in 2001. He has served as Chair of the Investment Funds Institute of Canada (IFIC), where he was directly involved in the creation of the industry's Code of Ethics for Personal Investing, and the IFIC Sales Practices Code, a predecessor to the CSA Sales Practices Rule 81-105. Mr. Hands was also a member of the OSC Working Committee on Disclosure and Investor Education, which reviewed the recommendations contained in the 1995 Stromberg Report. Prior to 1987, he was an associate and partner with the law firm of Day, Wilson, Campbell for 16 years. His appointment with the OSC expires in April 2005.

Robert L. Shirriff practices business law at Fasken Martineau DuMoulin, specializing in the areas of securities, mergers and acquisitions and mining. He joined Faskens upon being called to the Ontario Bar in 1958, and served as the firm's Chair from 1994 to 2001. He was appointed Queen's Counsel in 1971. Mr. Shirriff is also Chair of the De Beers Group of Companies in Canada, and Chair of Archangel Diamond Corporation. His appointment with the OSC expires in March 2005.

In Memoriam

It is with sorrow that we note the passing of Steve Paddon, one of our commissioners, on June 7, 2002. Mr. Paddon was appointed a Commissioner in January 1998 after a long and successful legal career both in private practice and as General Counsel to Crown Life. He contributed greatly to the life of the commission both in formulating policy and in participating in hearings. His perspective on securities and insurance issues, which he always delivered with a sense of humour, will be missed.

Our thoughts and prayers are with his wife, Deirdre, and family.

– David Brown

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The Canadian Securities Administrators (CSA) is the national organization representing the 13 provincial and territorial securities commissions.

Securities Regulators Review Executive Compensation Reporting

The Canadian Securities Administrators (CSA) have launched a review of how well publicly-traded companies comply with their executive compensation disclosure requirements. "Investors are entitled to detailed information about how executive compensation is linked to corporate performance," said Doug Hyndman, CSA Chair. "We are measuring how well that information is revealed. We hope that our findings will result in meaningful guidance for people who disclose information on behalf of companies."

"We are concerned with the narrative discussion of their approach to executive compensation."

The initial step is a review of how 75 Canadian companies comply in their information circulars with reporting requirements. Any company whose disclosure diverges from the requirements will be asked for an explanation. A report will be published later this year.

"Even though the regulations are clear and specific, the quality of executive compensation reports varies among companies," said John Hughes, Chair of the CSA's Continuous Disclosure Committee. "Most companies provide the basic numeric data required, but we are concerned with the narrative discussion of their approach to executive compensation."

Examples of the information that must be disclosed include:

- The specific relationship between corporate performance and executive compensation;
- If an executive is rewarded under a performance-based plan despite failing to meet the stated performance criteria, the reasons for any waiver or adjustment to the compensation formula;
- The basis for the CEO's compensation, including the factors and criteria on which the compensation is based and the relative weight assigned to each factor;
- The competitive rates on which the CEO's compensation is based if it is determined by assessments of competitive rates, as well as information about how the comparative group was selected and at what level in the group the compensation was placed.

In the second phase of the project, regulators will assess whether issuers have followed appropriately the recommendations of the new accounting standard on stock-based compensation and other stock-based payments.

"Some companies use boiler plate language to describe executive compensation," added Hyndman. "Publicly-traded companies across Canada are required to report in detail the framework of executive compensation. Investors should be able to see precisely how the compensation received by executives is derived, and determine if they support the practices given the company's performance."

"We are using a common approach to review compliance with continuous disclosure obligations coast-to-coast," said Hyndman. "The national review of executive compensation disclosure marks another important step toward a harmonized national securities regulatory presence."

For more information, please contact **John Hughes**, Manager, Continuous Disclosure, (416) 593-3695, jhughes@osc.gov.on.ca

CSA STAFF NOTICE 44-301 New Prospectus Rules: Frequently Asked Questions

OSC staff recently compiled a list of frequently asked questions (and answers to those questions) about the new prospectus rules issued by the CSA to address inquiries about the rules' application and operation. Issuers, their auditors and their counsel can turn to this resource for information that could assist them in complying with the new prospectus regime. The responses represent the views of staff and are intended as general guidance only. Staff will periodically republish this staff notice as new questions arise, or to reflect changes in staff's views.

In 2002, staff will assess the first year's experience with the new prospectus rules and consider whether changes, in addition to those suggested in the staff notice, would be appropriate.

The staff notice is available on the Ontario Securities Commission website (www.osc.gov.on.ca).

CSA STAFF NOTICE 55-306

Applications For Relief From Insider Reporting Requirements By Certain Vice-Presidents

This notice outlines the circumstances in which staff will support applications for relief from the requirements under Canadian securities legislation to file insider reports by persons who are technically insiders by virtue of holding the title of "vice-president" but who do not have access to confidential inside information.

The trading activities of "true" insiders may be hidden by the large volume of insider reports filed by nominal vice-presidents.

Canadian securities legislation requires insiders of a reporting issuer to disclose ownership of and trading in securities of that reporting issuer. The insider reporting requirements serve a number of functions, including deterring illegal insider trading and increasing market efficiency by providing investors with information concerning the trading activities of insiders of the issuer, and, by inference, the insiders' views of their issuer's prospects.

The Canadian Securities Administrators' staff recognize that requiring all vice-presidents to file insider reports may impose significant regulatory costs on some individuals and their issuers for little or no corresponding benefit. It has been suggested that the current requirements may actually serve to undermine the policy objectives underlying the insider reporting requirements, since the trading activities of "true" insiders may be hidden by the large volume of insider reports filed by nominal vice-presidents. Consequently, as a result of changes in industry practice, we believe that it is no longer appropriate to require all persons who are "vice-presidents" to file insider reports.

The full notice is posted on the OSC web site (www.osc.gov.on.ca). For more information, please contact **Paul Hayward,** Legal Counsel, Corporate Finance, (416) 593-3657, phayward@osc.gov.on.ca.

CSA STAFF NOTICE 55-307

Reminders To File Paper Insider Reports Using The Correct Codes

The purpose of this notice is to provide guidance to insiders who are filing paper insider reports.

All insiders who file paper insider reports must use Form 55-102F6, a new form that contains and requires the use of new nature of transaction codes, and new nature of ownership codes. For example, Form 55-102F6 prescribes nature of transaction code 50 for a "Grant of options" transaction, and nature of ownership code 1 for "Direct ownership". Please refer to the instructions page of Form 55-102F6 for a full list of these codes.

The new codes in Form 55-102F6 are significantly different from the codes in the previous paper form. For example, nature of transaction code 50 in the previous paper form refers to an "Acquisition or disposition by gift", instead of a "Grant of options". The CSA have received a number of paper reports that continue to use the old codes. The continued use of these old codes creates uncertainty as to what transaction is being reported, and may result in dissemination of misleading insider reporting information to the marketplace.

As a result, CSA staff will not accept any reports that use the old codes. CSA staff will return these reports, and require that insiders refile their reports on Form 55-102F6 using the correct codes. CSA staff recognize that prior to Form 55-102F6 coming into effect, a number of reporting issuers prepared customized insider report forms for their insiders. CSA staff will accept an insider report filed on a customized form, if it contains the information required and uses the codes prescribed by Form 55-102F6.

Please write "Form 55-102F6" on the customized form. PDF and/or Word versions of Form 55-102F6 can be downloaded from the OSC web site (www.osc.gov.on.ca).

For more information, please contact **Kelly Gorman**, Senior Accountant, Corporate Finance, (416) 593-8251, kgorman@osc.gov.on.ca

Investor Education Month

In conjunction with other regulators across Canada, the OSC expanded its fifth annual investor education campaign to make April National Investor Education Month. Focusing on the theme "Protect Yourself from Investment Fraud," Canada's securities regulators launched countrywide campaigns to help Canadians — in particular, youth and seniors — become more careful investors. The OSC Investor Education Month initiatives directly reached more than 600 investors, and distributed more than 400 investor education kits as a result.

The OSC participated in three major national initiatives with the Canadian Securities Administrators for Investor Education Month:

- The CSA launched the new Scouts Canada Investing Crest. To earn the Investing Crest, Canada's 43,000 Girl and Boy Scouts and Venturers will have to complete one of five financial activities, including: tracking a stock, interviewing a financial planner, explaining compound interest, reviewing financial internet sites for kids, and researching a type of investment.

- The CSA collaborated with producers of the weekly television program *Street Cents* on a segment warning teenagers about online investment scams.

- Additionally, the CSA produced a comprehensive brochure entitled *Protecting your finances: How to avoid investment frauds and scams*, aimed at identifying and warning about investment scams that frequently target seniors.

Along with the national campaign, the OSC organized investor education events and seminars for Ontario investors:

- Advertising campaigns in Chatelaine Magazine and Ontario university newspapers delivered investor education messages to students and general investors across the province.

- The OSC launched a new investor guide entitled *Financial Disclosure: What you need to know* to help Ontario investors understand the various sources of information available about public companies.

- A seminar entitled "*Protect Yourself from Investment Fraud*" was held in Ajax and Toronto to educate investors about current investment frauds and scams, and how they can protect themselves from investment scam artists. The OSC was joined by representatives from PhoneBusters and the Toronto Police Fraud Squad. These seminars are part of an ongoing partnership with Canada's Association for the Fifty-Plus to educate seniors about frauds and scams.

- As part of Investor Education Month, volunteer staff members from the OSC presented the *Junior Achievement's Personal Economics: Investing in Me* program. OSC professionals shared their knowledge and experience with over 300 seventh grade students from eight different schools located in Toronto and York Region.

The highlight of the month was the OSC Investor Education Conference, which brought together stakeholder groups from industry, investor groups, and education providers to promote collaboration and partnerships in investor education.

OSC Launches Investor Guide On Financial Disclosure

The Ontario Securities Commission has published a new Investor Guide, entitled *Financial Disclosure: What you need to know*, to help Ontario investors understand the sources of information available about public companies.

While there is a great deal of disclosure available to investors on the Internet, in the news media, from companies directly and from analysts, the challenge for investors is to understand the strengths and weaknesses of these sources of information. *Financial Disclosure: What you need to know* puts these disclosure documents into perspective for investors.

The 20-page guide, designed for investors who are ready to do their own research, discusses the types of disclosure available and what they need to know about each type. It also educates investors about the roles of the various parties that prepare these communications, such as the directors and auditors of the company. It outlines what type of information must be disclosed and in what form. The guide also gives useful tips on how investors can understand and analyze the quality of the information they receive. In addition, it explains the OSC's role in enforcing disclosure laws and what can happen if a company doesn't follow the rules.

Financial Disclosure: What you need to know is available free of charge as part of the OSC's investor education kit. It is the fifth in the OSC's *Guide for Investors* series, which also includes *An Investor's Guide to OSC Resources and Services*, *A Step-by-Step Guide to Making a Complaint*, *Dealers and Advisers: With Whom are You Dealing for Your Investment Services?* and *Borrowing to Invest: Understanding Leverage*.

Investors can request a free investor education kit by calling 1-877-785-1555 or they can view the OSC's investor resources, including the new guide, on the web site at www.osc.gov.on.ca. The new guide can be found on the Required Reading page of the Investor Resources section.

Dialogue with the OSC 2002 Conference

Thursday October 10th, 2002

SHERATON CENTRE HOTEL
123 QUEEN STREET WEST, TORONTO

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Includes Luncheon and Reception

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Call the OSC Contact Centre, at
T. (416) 593-8314 (877) 785-1555
Or visit the OSC website at www.osc.gov.on.ca

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission.

Settlement Reached in the Matter of Fran Harvie
On June 20, 2002, the OSC approved a settlement reached by staff of the commission and the respondent Fran Harvie.

Harvie illegally distributed shares in Lydia Diamond Explorations of Canada Ltd. She illegally raised over $1 million dollars from Ontario investors. She was paid commissions of $95,000 in cash and shares. The commission reprimanded Harvie and ordered that she be prohibited from trading securities for five years and from acting or becoming an officer or director of an issuer for five years. Copies of the Order and Settlement Agreement are available on the Commission's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, Toronto.

OSC Approves Settlement Between Staff and Mark Kassirer
On June 17, 2002, the OSC approved a settlement reached by staff of the commission and the respondent Mark Kassirer.

Kassirer was the Chair of Phoenix Research and Trading Corporation. He managed Phoenix Canada's equity arbitrage business. Phoenix Canada was registered with the commission as an investment counsel and portfolio manager pursuant to the *Securities Act*.

The Phoenix Fixed Income Arbitrage Limited Partnership (PFIA LP) was a hedge fund managed by Phoenix Canada. PFIA LP collapsed in early January 2000 when Phoenix Canada discovered that one of its fixed income traders had accumulated a $3.3 billion U.S. long position in U.S. 6% treasury notes due August 15, 2009. The UST Notes were not hedged and caused a significant overdraft position at the Bank of New York. PFIA LP was forced to liquidate its assets. As a result, PFIA LP lost in excess of $120 million.

Staff alleged that Kassirer failed to monitor adequately, and provide appropriate general oversight of, the business of Phoenix Canada including that related to the UST Notes.

The commission reprimanded Kassirer and ordered that Kassirer Asset Management Corporation, a registered investment counsel and portfolio manager of which Kassirer is the sole registered officer, submit to an independent review of its current controls and procedures and rectify any identified deficiencies. Kassirer must also pass the Partners, Directors and Officers examination as a term and condition of his continued registration. As a term of the settlement, Kassirer paid $10,000 in costs to the commission.

Copies of the Order and Settlement Agreement are available on the Commission's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, Toronto.

OSC Commences Proceedings against Phoenix Research and Trading Corporation, Ronald Mock and Stephen Duthie
The OSC has issued a Notice of Hearing and Statement of Allegations against Phoenix Research and Trading Corporation, Ronald Mock and Stephen Duthie.

Phoenix Canada was registered with the commission as an investment counsel and portfolio manager under the *Securities Act*. Mock was the CEO and President of Phoenix Canada. Mock ran the Phoenix Fixed Income Arbitrage Limited Partnership (PFIA LP), a hedge fund. Starting in the fall of 1998, Duthie was responsible for PFIA LP's U.S. dollar portfolio under the direct supervision of Mock. Duthie has never been registered with the commission.

PFIA LP collapsed in early January 2000 when Phoenix Canada discovered that Duthie had accumulated a $3.3 billion U.S. long position in U.S. 6% treasury notes due August 15, 2009. The UST Notes were not hedged and caused a significant overdraft position at the Bank of New York. PFIA LP was forced to liquidate its assets. The resulting loss to PFIA LP exceeded $120 million.

Staff alleges that Duthie:
- engaged in registerable activity for which he was not registered with the commission; and
- acted contrary to the best interests of Phoenix Canada's and his clients.

Further, staff alleges that Mock failed to:
- keep the proper books and records;
- implement and monitor the appropriate controls and procedures; and
- adequately supervise his staff.

It is staff's position that, without these failures, Duthie's activities would have been detected and the collapse of PFIA LP avoided. The Notice of Hearing and Amended Statement of Allegations are available on the commission's web site (www.osc.gov.on.ca).

OSC Proceeding in Respect of Livent Inc. et al Adjourned to October 4, 2002

The hearing before the OSC in respect of Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol scheduled for June 12, 2002, is adjourned to October 4, 2002 commencing at 9:30 a.m., on the consent of the parties, and in accordance with the terms of the Order of the Commission made June 10, 2002.

Copies of the Notice of Hearing issued on July 3, 2001 and Statement of Allegations, and the Order of the Commission made on June 10, 2002, are available at www.osc.gov.on.ca or from the commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

OSC Panel Finds Donnini Actions Contrary to the Public Interest

On June 11, 2002, an OSC panel found that Piergiorgio Donnini, a former head trader at Yorkton Securities Inc., acted in contravention of Section 76(1) of the Ontario *Securities Act* and contrary to the public interest. Specifically, the panel found that in early 2000, Mr. Donnini had knowledge of a potential financing for Kasten Chase Applied Research Limited (KCA) that had not been disclosed to the public. The panel agreed that Mr. Donnini traded in KCA shares while he had this information and as such, he acted contrary to the public interest.

A hearing has been set for July 11, 2002 to hear submissions in respect of sanctions against Mr. Donnini. Reasons for the decision will be issued after appropriate sanctions have been determined. Copies of the Notice of Hearing and Statement of Allegations are available at www.osc.gov.on.ca or from the commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

OSC Approves Settlement In The Matter of Lawrence D. Wilder

On May 28, 2002, the OSC approved a settlement agreement reached between staff of the commission and Lawrence D. Wilder. Copies of the Notice of Hearing issued by the OSC, the Statement of Allegations filed by commission staff, both dated November 1, 1999, as well as the Settlement Agreement and the Order made by the commission, both dated May 28, 2002, are available at www.osc.gov.on.ca.

OSC Approves Settlement in the Matter of Sohan Singh Koonar, Sports & Injury Rehab Clinics Inc., SelectRehab Inc., Shakti Rehab Centre Inc., Niagara Falls Injury Rehab Centre Inc., 962268 Ontario Inc., Apna Health Corporation and Apna Care Inc.

On April 9, 2002, the OSC approved a settlement agreement reached between staff of the commission and Sohan Singh Koonar, Sports & Injury Rehab Clinics Inc., SelectRehab Inc., Shakti Rehab Centre Inc., Niagara Falls Injury Rehab Centre Inc., 962268 Ontario Inc., Apna Health Corporation and Apna Care Inc. The agreement follows an enforcement action initiated on June 12, 2001 in which the OSC staff alleged that from August 1995 to May 1998 Koonar and the companies traded in securities in violation of the prospectus and registration requirements contained in Ontario securities law, and that as a result of these illegal distributions, an amount in excess of $1,000,000 was raised from over 300 investors.

The settlement agreement approved by the commission includes the following sanctions:
- Koonar must cease trading in securities for a period of 10 years, is required to resign his position as an officer or director of the companies and any other issuer in which he holds the position of officer and/or director, and is prohibited from becoming or acting as an officer or director of any issuer for a period of 15 years.
- Koonar has undertaken not to apply for registration in any capacity under Ontario securities law, and has agreed to make payment to the commission in the amount of $50,000 in respect of a portion of the costs incurred by the commission and staff in relation to this proceeding.
- The companies must cease trading in securities permanently.
- Koonar and the companies are reprimanded by the Ontario Securities Commission.

Copies of the Notice of Hearing issued by the OSC, Statement of Allegations filed by commission staff, the Settlement Agreement and the Order made by the commission are available at www.osc.gov.on.ca.

OSC Website Now Lists Individual Dealers and Advisers

Ontario investors can now use the Internet to access more complete information about their dealers and advisers. The OSC has posted to its website a list of all individuals and firms licensed to advise or trade in securities in the province.

Investors can use the web-based listing to:
- learn whether a particular individual or firm is in fact registered to advise clients or deal in securities;
- identify the categories in which they are registered (for example, mutual fund dealers, investment counsel, etc.); and
- learn whether any terms and conditions are attached to their registration.

Terms and conditions are imposed if the OSC determines that an applicant is suitable to be licensed, but only if certain restrictions are added to the registration. For example, an individual adviser might be subject to more stringent supervisory

control by his or her employer, while a firm might be required to file specific financial reports with regulators on a more frequent basis than other firms.

While a listing of all registered firms was already available on the OSC website, information on registered individuals previously could only be obtained by phoning the commission. The complete registrant list can be found in the "Market Participants" section of the OSC website at www.osc.gov.on.ca.

RECENT SPEECHES

Recent Speech by OSC Chair David Brown

Excerpts from an address by David Brown, Q.C., Chair of the Ontario Securities Commission, to the Investment Funds Institute of Canada, April 2, 2002

A Fair Dealing Model

[...] Competition and technology are driving down the cost of executing a trade in a security, putting a premium on the value of advice. Advice used to be incidental to trading. Now, trading is incidental to advice. At the same time, retail investors are gaining more access to the market, service providers are converging - and of course the mutual fund industry is playing a more important role than ever.

All of these trends have made it critical to shape a model for fair dealing between the financial services industry and retail investors - a model that will serve the interests of investors and the needs of the industry as a whole. We have to ensure that competition flourishes, and regulation is cost-effective. [...]

Regulators, the industry, and investors recognize that it is time to re-shape the regulatory model to fit the industry's current business model. That's why we have been working with the industry to re-shape our regulatory approach to the new investor-industry relationship, what I call the "Fair Dealing" model.

The vehicle was the Advisory Group representing all stakeholders. That includes the mutual fund sector. It includes institutional investors and retail investors; small firms and large ones; full-service brokers and discount brokers; portfolio managers and financial planners.

"We're concerned that incentives are inadequate for firms to adequately monitor employees with strong performance records."

The industry recognized the need to ensure fair dealing that properly serves the interests of both investors and the financial services community. Along with investors and other stakeholders, you are rolling up your sleeves and getting to work.

The Advisory Committee's efforts have been a great start to this. Together, we are shaping a consensus around principles of a fair dealing standard that would make the regulatory system work. While the consultation process will be carried forward with industry participants at sessions beginning later this month, I believe several key principles are apparent:

First, responsibility has to be clearly allocated between the firm and the investor, and the firm's representative and the investor. Second, transparency has to be ensured - regarding asset transformation services offered, risks, costs, remuneration, and conflicts of interest. Third, access by retail investors has to be promoted - access to opportunities, self-management of accounts, and the provision of services in a competitive market. Fourth, there must be zero tolerance for self-serving outcomes where the firm or the firm's representative has a conflict of interest.

The Advisory Group helped identify several elements essential to fair dealing between the industry and investors. The regulatory system must aim to reduce disputes between financial service providers and their clients. That demands clarity on the part of both the provider and the client at the outset of their relationship, and basic client awareness about the operation of the market.

The regulatory system should aim to keep the costs of complying with new requirements as low as possible. And costs must be matched by benefits. Regulatory requirements that do not benefit investors should be eliminated. Requirements that have outlived their usefulness should be eliminated or replaced. To the extent possible, financial service providers should be given the flexibility they need to operate in the most efficient manner.

The regulatory system must unduly favor neither large nor small firms. Nor should it provide an incentive for individuals to avoid regulatory compliance by acting as independent contractors or gravitating to smaller firms. The system should be adaptable to other jurisdictions and to all sectors. [...]

Are advisors with small accounts getting less access to quality, tailored investment advice? The Forrester Report on Overhauling Financial Advice two years ago found that most consumers get no advice, or advice that is overpriced, product driven, or of low quality. This issue demands that we take a step back and ask ourselves: Will the creation of a fair dealing model exacerbate this problem, limiting access to advice by increasing costs of transparency and compliance? How do we avoid that?

The Forrester Report suggested that access to high-quality advice can be enhanced in the future through improved automated advice products. They offer the advantage of greater objectivity, consistency, and a better focus on fundamental financial questions rather than product features.

We also have to look at access to financial information for consumers trading through discount brokers. That could include better availability of basic information about how markets work, implications of various types of orders, plain language explanations of margin trading and its consequences, explanations of securities with unusual characteristics, such as trading in a foreign currency. [...]

"Regulatory requirements that do not benefit investors should be eliminated."

[W]e've examined compliance and enforcement. We're concerned that incentives are inadequate for firms to adequately monitor employees with strong performance records. We're concerned about supervisory and compliance mechanisms for mutual fund salespeople with an independent contractor relationship with a firm. And it is too easy for an employee who draws compliance concerns at one firm to move over to another firm. That's like sorting a bad apple out of one barrel and putting it in another. In this area too we will be taking some specific ideas forward for further consultation.

We can place clearer responsibility on firms for improper activities of their officers, employees, and agents. That would include making it clear that a firm is subject to enforcement actions even if it is unaware of its employees' or agents' improper activities, if it did not adequately investigate suspicious activities. That would include unusually high production levels. Firms could also be liable if the wrong type of advice is being provided on a systematic basis. And enforcement action could include liability for losses.

We could require the creation of a new entity within the firm, whose functions would be limited to compliance and back-office operations. Independent contractors could be required to contract that function out if they can't provide it themselves. We could also make the contents of termination notices and other information from registration applications available over the Internet.

And finally, we're going to ask industry participants to look at the ramifications of the changing use of the media as a source of investment advice. We are seeing advisory services or advertising in form and content similar to the websites of respected news services. We also see financial service providers using promotional seminars to attract clients - with a hired speaker represented as an objective source of advice and information.

"Most consumers get no advice, or advice that is overpriced, product driven, or of low quality."

Based on the outcomes of consultations, the OSC will be issuing a concept paper in the near future, putting forward for comment these and other potential regulatory proposals. We have looked at inefficiencies in our regulatory model, and resulting compliance costs.

We've looked at a number of questionable practices, and a number of ways in which investors do not receive the service and advice they require. And we have seen a tremendous commitment from industry leadership to address these shortcomings. The industry as a whole recognizes that it depends on client confidence, a reputation for fairness, and an effective regulatory regime.

What can emerge from a fair dealing model between the financial services industry and retail investors is a stronger industry. We can achieve enhanced competition around quality of advice. We can ensure clarity in provider-client relationships. And we can cut unnecessary compliance costs, ensuring that providers and investors receive maximum regulatory value for every dollar spent.

For providers and clients, it can be win-win. In this first decade of the 21st century, the investing environment is undergoing a dramatic overhaul. The regulatory environment must keep pace.

***(OSC Unveils "Fair Dealing Model"** from page 1)*

"A fair dealing model can result in a stronger financial services industry, enhanced competition around quality of advice, and clarity in provider-client relationships," OSC Chair David Brown said in a recent speech to kick off Investor Education Month last April (see article on page 6). "And it would cut unnecessary compliance costs, ensuring that providers and investors receive maximum regulatory value for every dollar spent."

The OSC and its advisory group have studied business models in the financial services industry and recognized that the current regulatory model has become outdated. For example, securities regulations assume that advisers are compensated based on trading activity, yet most firms now take a wealth management approach where trading and advising are no longer viewed as separate activities. The proposed regulatory model is more flexible and would better reflect market realities.

The following changes are being considered:

- more complete information on how service providers are compensated would be required, including clear disclosure of whether they receive payments or incentives from product issuers;
- new account opening documentation would clarify the nature of the provider-client relationship and potentially improve clients' understanding and acceptance of investment risk;
- responsibility would be placed clearly on firms for any improper activities of their officers, employees and agents, including liability for losses;
- current registration categories would be replaced with a single service provider license which would make no distinction between trading and advising; and
- certain regulatory requirements would be reduced to improve small investors' access to a variety of investment opportunities and increase market access for new types of service providers.

Staff plan to expose the new fair dealing model to a wider group of stakeholders and publish detailed proposals by the summer. For more information, please contact **Julia Dublin**, Senior Legal Counsel, Capital Markets Branch, 416-593-8103, jdublin@osc.gov.on.ca.

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The OSC Website, www.osc.gov.on.ca includes:
Information on the OSC, Investor Information,
Rules and Regulations, Enforcement Information
and Market Participants.

ONTARIO SECURITIES COMMISSION

Volume 5, Issue 4

PERSPECTIVES

inside...

FALL 2002

OSC Increases Continuous Disclosure Reviews

The OSC is building up its Continuous Disclosure Team to increase the vigilance of company reviews and to ensure that the largest TSX companies headquartered in Ontario are reviewed this year 2

Independent Public Oversight for Auditors of Public Companies

A system to oversee the auditors of public companies in Canada will be administered by the new Canadian Public Accountability Board (CPAB) 4

Small Business Advisory Committee Established

The OSC has established a Small Business Advisory Committee (SBAC) to advise on securities regulatory issues facing small and medium-sized businesses in Ontario ..5

CSA Proposes Opening Fund of Funds Regime

The OSC has published for comment proposed amendments that would open up the current regulatory framework for fund of funds structures 8

Securities Regulators Propose National Disclosure Rule

Public companies will have to abide by only a single set of securities requirements in filing their financial statements and other continuous disclosure documents, under a new national rule proposed by the Canadian Securities Administrators 9

FEATURE

OSC Takes Steps to Restore Investor Confidence

In the wake of the financial reporting scandals in the U.S. and the passage of the Sarbanes-Oxley Act (SOX) and other U.S. regulatory changes, the Ontario Securities Commission is working with governments and other agencies and organizations to promote investor confidence in Canada's capital markets.

The OSC has reallocated resources to its Continuous Disclosure Team to conduct disclosure reviews this year of the 100 largest TSX-listed companies headquartered in Ontario (full story page 2).

Canadian securities regulators, the federal government and the Canadian Institute of Chartered Accountants (CICA) have established a new, independent oversight board for auditors (full story page 4).

In an open letter to all market participants, OSC Chair David Brown has outlined the OSC's approach for addressing issues raised by SOX and new exchange listing requirements. Mr. Brown calls for a "made-in-Canada" approach that promotes investor confidence, attracts capital to Canada and preserves Canadian access to U.S. capital markets.

Mr. Brown has also issued a series of letters to the TSX, Canada's ten largest securities dealers, the CICA and the Law Society of Upper Canada seeking their advice and views on crafting a Canadian response to U.S. developments.

The open letter and the four stakeholder letters are all available on the OSC's website www.osc.gov.on.ca.

INDEX

THE OSC WEBSITE, WWW.OSC.GOV.ON.CA INCLUDES:
INFORMATION ON THE OSC; INVESTOR INFORMATION; RULES AND REGULATIONS; ENFORCEMENT INFORMATION AND MARKET PARTICIPANTS.

Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets.

OSC Increases Continuous Disclosure Reviews

More Staff, Higher Targets, Deficient Companies to be Named

The OSC is building up its Continuous Disclosure Team to increase the vigilance of reviews of Ontario-based companies that issue securities to the public and to ensure that all of the largest 100 TSX companies that are headquartered in Ontario are reviewed this year, as announced on August 15, 2002.

OSC Reviews of Largest Ontario-Based Companies

Given the magnitude of accounting and auditing problems seen recently in American companies, the OSC is committing additional resources to its Continuous Disclosure Team, on a temporary basis. This will allow the OSC, among other things, to carry out a very thorough and timely review of 44 major companies that have not been reviewed by securities regulators in the normal course of reviews carried out in the past year.

These companies have not been selected for review because of suspicions about their disclosures. Indeed, the commission has no evidence of any problem with any of these companies. "What we are doing is accelerating the pace of the reviews of Ontario's largest and most influential companies because of their importance to our capital markets and their impact on investor confidence," said David Brown, OSC Chair.

"While our target has been to review 25% of reporting companies each year, over a recent 12-month period we reviewed nearly 30% of Ontario-based companies," said Brown, on releasing the 2002 Continuous Disclosure Review Annual Report. "And although we have not found any serious evidence of wrongdoing, we are expanding the scope and number of reviews we undertake. These times require us to be extraordinarily diligent in our reviews of publicly-traded companies' public disclosures," he said.

OSC To Name Deficient Companies

"When it comes to ensuring investor confidence, the quality and timeliness of public information disseminated by a company are crucial," said Brown. "Shareholders of a company need to know that they can trust the information they receive. To that end, we will begin to publicly identify companies when we require them to refile financial information," added Brown.

CD Team Annual Report Results

Under Ontario's existing securities legislation, publicly-traded companies are required to disclose important changes about their business as these changes occur. Historically, U.S. companies have not had a similar obligation. "Prompt disclosure of material changes has been a key component of our system for a number of years and I'm pleased to see the U.S. improving their disclosure standards," said Brown.

Continuous disclosure reviews focus on the information that companies are required to release, including their interim and annual financial statements, as well as the accompanying management discussion and analysis. The reviews have four major outcomes:

- companies reviewed are helped in meeting their disclosure requirements;
- some companies are required to restate corporate information already disclosed;
- other companies are required to make improvements to their future disclosure practices; and
- the OSC identifies serious problems that require new policy direction.

The OSC is applying a risk-based approach to focus reviews on companies that have a large impact on the capital market or on those whose past record suggests attention could be needed. Through ongoing continuous disclosure reviews, the OSC's target is to review each company based in Ontario at least every four years.

The most significant results of 517 reviews of Ontario-based companies conducted between April 1, 2001 and March 31, 2002 and described in OSC Staff Notice 51-703: Implementation of Reporting Issuer Continuous Disclosure Review Program, were:

- 57% of reviews resulted in no significant changes;
- 23% of companies reviewed agreed to enhance their future disclosure practices;
- 4% of companies reviewed developed corporate disclosure policies;
- 3% of companies reviewed made retroactive accounting changes;
- 2% of companies reviewed were placed on a default list;
- 2% of companies ceased to be reporting issuers; and
- 9% of companies made filings that were deficient; these companies were required to refile certain materials, a majority of which were interim financial statements.

The reviews included companies from the following sectors:

- Technology (30%)
- Mining, oil and gas (17%);
- Consumer and industrial products (16%);
- Financial services (12%);
- Health care (5%);
- Communication, media and entertainment (5%); and
- Other (15%).

"Our Continuous Disclosure Team will continue to examine documents provided by Ontario's publicly-listed companies," said John Hughes, Manager, Continuous Disclosure.

"We review disclosures for compliance with generally accepted accounting principles, for clarity and overall balance, and to target specific, sensitive issues such as revenue recognition and compensation disclosure. We are encouraged with improvements we are seeing in the quality of information disclosed by companies since we launched the Continuous Disclosure Team. Our purpose is to encourage greater discipline in issuers, so that they can consistently provide reliable information that allows shareholders to invest confidently," concluded Hughes.

For more information, please contact **John Hughes**, Manager, Continuous Disclosure, (416) 593-3695, jhughes@osc.gov.on.ca.

Continuous Disclosure Advisory Committee Membership Announced

The OSC announced on August 15, 2002 the members of the Continuous Disclosure Advisory Committee (CDAC). The CDAC will advise OSC staff on such matters as the planning, implementation and communication of its continuous disclosure review program, the impact of policy- and rule-making initiatives, emerging issues, and the OSC's procedures. The CDAC members will serve two-year terms and meet four to six times each year.

The members of the CDAC are:

- Andrew Campbell, Senior Manager, Financial Analysis & Communications, Bank of Montreal
- Elizabeth DelBianco, Vice-President, General Counsel & Corporate Secretary, Celestica Inc.
- Andrew Fleming, Partner, Ogilvy Renault
- Tom Graham, Manager, Corporate Finance, TSX Venture Exchange
- Bill Hewson, Director Accounting and Corporate Reporting, Canadian Pacific Railway
- John Hughes, Manager, Continuous Disclosure, OSC (CDAC Chair)
- Guy Jones, Vice-President, Finance, Decoma International Inc.
- Jennifer Lederman, Financial Services Consultant
- Bill Mackenzie, President, Fairvest Corporation
- Tom Muir, Chief Financial Officer, Maple Leaf Foods Inc.
- William Orr, Partner, Heenan Blaikie LLP
- Philip Speller, Independent Analyst/Consultant
- Bob Tait, Director, Investor Relations, Canadian Tire Corp. Ltd.
- Richard Wertheim, Managing Partner, Wertheim + Company Inc.
- Gil Yaron, Director of Law & Policy, Shareholder Association for Research and Education
- Amelia Young, Senior Director, Investor Relations, Hummingbird Ltd.

"The extensive knowledge of continuous disclosure issues brought by CDAC members will greatly assist us in understanding issues faced by those who generate disclosure and the investors who rely on it," said OSC Manager of Continuous Disclosure John Hughes. "We are fortunate to form a committee that reflects the variety of users and industry sectors involved in continuous disclosure," added Hughes.

The CDAC is the latest instance of a committee of stakeholders being established by the OSC to provide input on securities regulation issues. Other groups are already in place to advise staff on compliance issues, the fair dealing model, commodity futures, bond market transparency, institutional equity trading, small business issues and reducing the regulatory burden. The Securities Advisory Committee comments on legal, regulatory and market implications of OSC policies, operations, and administration. The new CDAC will be complementary to established committees, and will focus on continuous disclosure practices and procedures.

For more information, please contact **John Hughes**, Manager, Continuous Disclosure, (416) 593-3695, jhughes@osc.gov.on.ca.

OSC Issues Report on Compliance Deficiencies

On September 9, 2002, the OSC issued a report outlining deficiencies identified in field reviews of market participants' compliance practices during the period April 1, 2001 to March 31, 2002. Where problems were found, ten common deficiencies were identified in advisers' practices and seven common deficiencies were identified in fund managers' practices. The report also provides best practice guidelines to assist market participants in improving their compliance environments.

Field reviews completed by the team are comprehensive reviews of market participants' operations. All market participants reviewed were given a report identifying any compliance deficiencies noted. In most cases, market participants had good compliance regimes in place and only relatively minor deficiencies were noted. In some cases, substantial deficiencies were identified. In these cases, customized terms and conditions were imposed on advisers' registration to encourage their greater compliance with securities laws. In fewer cases, advisers were also required to have their registration reviewed and renewed monthly.

The report is available on the OSC web site at www.osc.gov.on.ca under "Rules and Regulations", "Compliance". For more information, please contact **Marrianne Bridge**, Manager, Compliance (416) 595-8907, mbridge@osc.gov.on.ca.

New Independent Public Oversight for Auditors of Public Companies

To strengthen confidence in capital markets and the credibility of financial statements, a new system will oversee the auditors of public companies in Canada.

On July 17, the Canadian Securities Administrators (CSA), the Office of the Superintendent of Financial Institutions (OSFI), and Canada's chartered accountants released details about the new system, which includes:

- more rigorous inspection of auditors of public companies;
- tougher auditor independence rules; and
- new quality control requirements for firms auditing public companies.

The new requirements will apply to auditors of publicly listed companies and will be administered and enforced by the new Canadian Public Accountability Board (CPAB). The creation of the CPAB will ensure the independence and transparency of the new process.

Major firms conducting public company audits will now be reviewed annually and subject to a more comprehensive examination of their quality control polices and procedures. Failure to remedy significant deficiencies identified by the CPAB will result in sanctions and will also be communicated to the appropriate regulators, which may take action.

Canada's major CA firms have voluntarily agreed to implement the new requirements in October 2002, which will coincide with the establishment of the CPAB. The CPAB requirements will apply to all other firms auditing public companies within three years.

"This new oversight body is not controlled by the CA profession," said Ontario Securities Commission Chair David Brown, who will chair the group mandated to appoint the CPAB members. "The new system is based on independent, public oversight, tougher practice inspection and more rigorous quality control mechanisms. We intend to seek public comment on new rules that will require auditors of Canadian publicly listed companies to be members in good standing of the CPAB."

The CPAB will be made up of 11 individuals, including seven from outside the CA profession, and is expected to hold its first meeting in mid-October. The CPAB requirements will ensure that Canadian CA firms in the course of auditing public companies will:

- undergo more frequent and rigorous inspections, which will be conducted by a new national inspection body and will include public, annual reporting of results;
- accelerate the adoption of more stringent standards on auditor independence, including limits on the types of consulting services that can be provided to audit clients;
- rotate the lead partner on an audit on a regular basis;
- have a second partner review every audit; and
- have resources and procedures in place to ensure consultation takes place on difficult, sensitive or contentious issues.

"The fact that the CA firms that audit large companies have already agreed to implement these changes means we can proceed without delay to get the improvements in place," said Canadian Institute of Chartered Accountants (CICA) President and CEO David Smith, adding that the changes will become part of the profession's mandatory rules once they go through the various consultation and approval processes.

It is estimated that the new quality control system will cost at least $6 million annually, which is double the amount currently spent on practice inspection by the CA profession through provincial CA Institutes/Ordre.

Additional information is available at www.osc.gov.on.ca and at http://www.cpab-ccrc.ca/-/index.html regarding:

- Canadian Public Accountability Board
- Requirements for CA Firms that Audit Public Companies
- Sanctions for Auditors

For more information, please contact **John Carchrae**, Chief Accountant, OSC, (416) 593-8221, jcarchrae@osc.gov.on.ca.

Canadian Trading and Quotation System Application for Recognition

Canadian Trading and Quotation System (CNQ) has applied to the Commission for recognition as a quotation and trade reporting system under section 21.2.1 of the Ontario Securities Act.

The Commission has published for comment the following documents in Chapter 13 of the July 26, 2002 edition of the OSC Bulletin:

1. Notice and request for comment
2. CNQ's application
3. CNQ Policies
4. CNQ Rules
5. Draft recognition order

For more information, please contact **Susan Greenglass**, Legal Counsel, (416) 593-8140, sgreenglass@osc.gov.on.ca, or **Barbara Fydell**, Legal Counsel, (416) 593-8253, bfydell@osc.gov.on.ca.

TSX Inc. Reorganization and IPO

TSX Inc. (formerly The Toronto Stock Exchange Inc.) has applied to the Commission for an amended and restated recognition order to reflect a reorganization prior to the initial public offering of TSX Group Inc., a new holding company for TSX Inc., as well as the name change of The Toronto Stock Exchange Inc. to TSX Inc. In addition, the Canadian Venture Exchange Inc. (CDNX) has applied to amend its exemption from recognition order to reflect the reorganization of TSX Inc. and the name change of CDNX to TSX Venture Exchange Inc.

The Commission has published for comment the following documents in Chapter 13 of the July 26, 2002 edition of the OSC Bulletin:

1. Notice and Request for Comment
2. TSX Inc.'s application
3. Schedules to TSX Inc.'s application
   a. Draft order under subsection 21.11(4) of the Securities Act
   b. Draft regulation under subsection 21.11(5) of the Securities Act
   c. Amended and restated recognition order for TSX Inc.
   d. Amended exemption from recognition order for TSX Venture Exchange Inc.

For more information, please contact **Susan Greenglass**, Legal Counsel, (416) 593-8140, sgreenglass@osc.gov.on.ca, or **Cindy Petlock**, Manager, Market Regulation, (416) 593-2351, cpetlock@osc.gov.on.ca.

OSC Small Business Advisory Committee Established

The Ontario Securities Commission has established a Small Business Advisory Committee (SBAC) to advise on securities regulatory issues facing small and medium-sized businesses in Ontario. In particular, the SBAC will advise staff on any issues arising from the implementation of the recently-revised Exempt Distributions rule. It will also serve as a forum for continuing communication between the Commission and small business.

The SBAC will be chaired initially by Margo Paul, Manager, Corporate Finance, OSC, who will serve a two-year term. The SBAC will be composed of approximately ten individual volunteers, meeting approximately four times a year.

Applications from interested parties were received up to August 31, 2002.

Background

In June 1994, the Commission established an industry task force, known as the Task Force on Small Business Financing, to make recommendations about the Ontario legislative and regulatory framework governing the raising of capital by small and medium-sized enterprises. The Task Force issued its final report in October 1996.

On November 30, 2001, revised OSC Rule 45-501 Exempt Distributions came into force. This rule implements many of the recommendations of the Task Force relating to the regulation of private placement financing.

Recognizing the critical role played by the Task Force's industry participants in the development of the new exempt market regime, the Commission is establishing the SBAC to provide ongoing advice to the Commission and its staff.

For more information, please contact **Margo Paul**, Manager, Corporate Finance, (416) 593-8136, mpaul@osc.gov.on.ca.

OSC Announces Credit for Cooperation Guidelines

It is part of the Commission's compliance policy that market participants should have an incentive to self-police, self-report, and self-correct matters that may involve breaches of Ontario securities law or activities that would be considered contrary to the public interest.

Cooperation in accordance with new guidelines may lead to recommendations which narrow the scope of the allegations, a reduction in the sanctions proposed, and, in some cases, a decision not to name a market participant in the Notice of Hearing.

OSC Staff Notice 15-702 is intended to formalize Staff's position on what cooperation means and how cooperation can be translated into a form of credit during the investigative and litigation process.

Staff's expectations of market participants

A market participant that identifies a serious problem in respect of their systems of internal control, the reporting of financial results, misleading disclosure, illegal trading or any other inappropriate activity that has impacted investors or cast doubt on the integrity of Ontario's capital markets, should promptly and fully report to the appropriate regulatory or law enforcement agency.

When a serious matter is reported to staff of the OSC, a market participant should volunteer all the necessary books and records required to assess the matter and any reports or analysis prepared by experts retained by the market participant or its counsel.

The market participant should fully and completely provide restitution, if appropriate, to any investors that have been harmed by inappropriate conduct or by a failure of internal controls.

What is not viewed as cooperation

In general, staff of the OSC will not give credit for cooperation to market participant in situations where, during the course of an investigation, the market participant puts the

interest of the firm or its officers, directors or employees ahead of its obligations to clients, shareholders, or the integrity of Ontario's capital markets.

Specifically, no credit for cooperation will be given when market participants:

- fail to promptly and fully report serious breaches of Ontario securities law to staff of the OSC or to another regulator when the facts of the matter are known to them;
- withhold information that in light of the circumstances should be provided to staff of the OSC;
- arrange their affairs in such a manner as to delay reporting a matter that should be reported or to claim a privilege to avoid providing details of potential breaches of Ontario securities law;
- indicate they are prepared to cooperate fully but will only provide information on a compelled basis;
- misrepresent the facts of a situation; or
- destroy documents in an attempt to avoid production of the records.

Credit for cooperation

If potential respondents act in a responsible manner during the course of an investigation and have self-policed, self-reported, and self-corrected the matters under investigation, staff may agree that it may be in the public interest to resolve the outstanding issues by administrative measures.

Greater cooperation during the course of an investigation will lead to reduced costs incurred by Commission staff, and consequently, a reduction of the potential costs that might be assessed under section 127.1 of the Act.

Full text of the Notice is available in the June 28, 2002 edition of the OSC Bulletin.

For more information, please contact **Michael Watson**, Director, Enforcement, (416) 593-8156, mwatson@osc.gov.on.ca.

OSC Approval of Amendments To IDA By-law No. 15

Provision of Financial Assistance by the IDA to Industry Organizations and SROs

The OSC approved amendments to Investment Dealers Association of Canada (IDA) By-law No. 15 regarding the provision of financial assistance by the IDA to securities industry organizations and securities regulatory organizations, subject to the following two conditions:

1. Before the proposed amendment becomes effective, the IDA will revise proposed by-law 15.11 by inserting the words "except Member" in order to clarify the IDA's intention. Once it is in effect, the relevant part of the by-law will read as follows:

"... to, of or in respect of any person or organization, except Members, engaged in regulation, education, registration, operations, trading, customer protection or other participation in or in respect of the Canadian capital markets and the business of Members of the Association ..."

2. Thirty days prior to exercising its powers under section 15.11, the IDA must notify the principal regulator that the IDA intends to provide financial support to other securities industry organizations or securities regulatory organizations. The IDA must also include details of the financial support and provide a copy of its most recent interim financial statements. Currently, the principal regulator is the Ontario Securities Commission.

In addition, the Saskatchewan Securities Commission approved, the Alberta Securities Commission did not disapprove and the British Columbia Securities Commission did not object to these amendments, subject to the same two conditions. The amendments will streamline the process for the IDA to provide financial support to securities industry organizations and securities regulatory organizations, while tightening the controls surrounding the authorization of such support. The amendments are housekeeping in nature. A copy of the amendments is published in Chapter 13 of the July 19, 2002 edition of the OSC Bulletin.

For more information, please contact **Cindy Petlock**, Manager, Market Regulation, (416) 593-2351, cpetlock@osc.gov.on.ca.

NRD Launch Deferred To 2003

The launch date of the National Registration Database, the new web-based system for registering dealers and advisers, has been shifted to the first half of 2003. It was previously targeted for November 25, 2002.

Coding of the system has been completed on schedule, but the CSA has decided to be more rigorous in the final testing phase than originally planned, to ensure that NRD can withstand the demands of full scale usage. Previous testing phases have not uncovered any serious problems.

Regulators will announce a definitive NRD launch date by the autumn of 2002, to ensure that registrants have adequate time to complete their preparations. For more information, please visit the NRD information website at www.nrd-info.ca.

OSC 2002 Annual Report Available

The theme of this year's annual report is "Defining the OSC". Through definitions of *confidence, innovate, integrity and simplify*, we describe objectives we are striving for, or working to foster among our market participants.

The OSC 2002 Annual Report is available online at www.osc.gov.on.ca or from the OSC by calling 416-593-8314 or toll-free 1-877-785-1555.

Dialogue with the OSC 2002

"Fostering Capital Markets that are Fair, Efficient and Safe"

Thursday October 10th, 2002

SHERATON CENTRE HOTEL, 123 QUEEN STREET WEST, TORONTO

CONFERENCE PROGRAM

8:45
Introductory Remarks – *Charlie Macfarlane, Executive Director*

9:00
Keynote Address – *David Brown, Chair*

9:30
Panel of CSA Chairs – *David Brown (OSC), Doug Hyndman (BCSC), Steve Sibold (ASC)*

10:30
Break

10:45
Break-out Session #1

- **Significant Legal & Regulatory Developments –** *Chair: Susan Wolburgh Jenah, General Counsel*
  The session will include a discussion of the Five Year Review Committee's Draft Report and comments received in response and National Policy 51-201 Disclosure Standards.

- **Fair Dealing Model –** *Co-Chairs: Julia Dublin, Senior Legal Counsel, Capital Markets Branch, and Randall Powley, Chief Economist*
  Members of the Fair Dealing Advisory Group will describe the OSC's new proposals for regulating the relationship between the financial services industry and individual investors.

- **Continuous Disclosure Update –** *Chair: John Hughes, Manager, Continuous Disclosure*
  The session will provide an update on the current focus and scope of the OSC's CD review program, including its review of executive compensation disclosures, and the CSA's CD harmonization initiative.

12:00
Luncheon Address – *Randall Powley, Chief Economist*

1:30
Panel of OSC Vice-Chairs – *Paul Moore & Howard Wetston*

2:45
Break-out Session #2

- **Recent Developments in Enforcement –** *Chair: Michael Watson, Director, Enforcement*
  Topics discussed in the session will include the joint RCMP/OSC Securities Fraud Unit, disclosure issues and financial misrepresentations, temporary orders and current litigation issues, and staff's credit for cooperation policy.

- **Building Investor Confidence in Financial Reporting –** *Chair: John Carchrae, Chief Accountant*
  The session will address the OSC's views on recent regulatory developments affecting financial reporting, and its priorities for continuing reform.

- **New Proposals for Investment Funds –** *Co-Chairs: Rebecca Cowdery, Manager, Investment Funds Regulatory Reform, and Paul Dempsey, Manager, Investment Funds*
  The discussion will include recent proposals regarding investment fund continuous disclosure, fund of funds, point of sale disclosure, and fund governance.

3:45
Break

4:00
Break-out Session #3

- **Corporate Finance, Mergers & Acquisitions –** *Chair: Ralph Shay, Director, Take-over Bids, Mergers & Acquisitions and Acting Director, Corporate Finance*
  The session will address current issues such as financing using equity lines, income trusts, reporting of equity monetization transactions, and implications of developments regarding poison pills and voting support agreements.

- **Risk-based Approach to Capital Markets Regulation –** *Chair: Randee Pavalow, Director, Capital Markets*
  Staff from the Registration, Compliance and Market Regulation teams will discuss their evolving approaches for more effectively enhancing regulatory compliance among market participants.

- **Sarbanes-Oxley Act in a Canadian Context –** *Chair: Susan Wolburgh Jenah, General Counsel*
  The discussion of the recent US legislation will include a comparison to existing Canadian laws, and staff's views on an appropriate Canadian regulatory response.

5:15
Reception

REGISTER NOW

- Register online at www.osc.gov.on.ca/dialogue
- Or call the Dialogue with the OSC 2002 Hotline at (416) 593-7352 or (800) 360-0493

Registration Fee: $395
The registration fee includes conference materials, luncheon, refreshments and evening reception. GST is included.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The Canadian Securities Administrators (CSA) is the national organization representing the 13 provincial and territorial securities commissions.

CSA Proposes Opening Funds of Funds Regime

The Commission has published for comment proposed amendments that would open up the current regulatory framework for fund of funds structures contained in National Instrument 81-102 Mutual Funds and its Companion Policy 81-102CP. These proposals would also impose certain disclosure requirements specific to fund of funds structures through amendments to National Policy 81-101 Mutual Fund Prospectus Disclosure and its related Forms 81-101F1 Contents of Simplified Prospectus and 81-101F2 Contents of Annual Information Form.

In addition to the fund of funds amendments, the Commission is also proposing to make a number of miscellaneous amendments that are described in the notice of the proposed amendments.

The documents are published in the July 19, 2002 edition of the OSC Bulletin.

For more information, please contact **Paul Dempsey**, Manager, Investment Funds, (416) 593-8091, pdempsey@osc.gov.on.ca.

CSA Adopts New Policy on Disclosure Standards

Canadian securities regulators have adopted a policy statement that provides guidance and best practices on corporate disclosure and assists public companies in avoiding selective disclosure.

"It is fundamental that everyone investing in securities should have equal and timely access to information that may affect their investment decisions," said Doug Hyndman, CSA Chair. "The law has required this for many years but we are giving companies fresh guidance to help them avoid selectively disclosing material information to analysts, institutional investors, investment dealers and market professionals."

Selective disclosure occurs when a company discloses material non-public information to one or more individuals or companies and not broadly to the investing public. Selective disclosure can create opportunities for insider trading and also undermines retail investors' confidence in the marketplace.

National Policy 51-201 Disclosure Standards provides guidance on best disclosure practices in a difficult area. "We need to strike the right balance between business pressures and the need for information to be broadly available to all investors," added Hyndman. "Our recommendations are not intended to be prescriptive. We encourage companies to adopt the suggested measures, but flexibly and sensibly to fit their particular situation."

Securities legislation prohibits tipping and insider trading. Tipping occurs when someone provides information about a material fact or a material change (privileged information under Québec legislation) before that information has been generally disclosed. Insider trading involves someone buying or selling securities with knowledge of a material fact or material change about the issuer that has not been generally disclosed. The policy includes best practices to help issuers and their insiders avoid situations that could lead to tipping or insider trading.

The new policy indicates that selective disclosure violations can occur in a variety of settings, including one-on-one discussions, such as analyst meetings, in industry conferences and other types of private meetings. "Companies should be very sensitive to the risks involved in private meetings with analysts," said Hyndman.

The timely disclosure requirements and prohibitions against selective disclosure are substantially similar everywhere in Canada, but there are differences among the provinces and territories. Companies should carefully review the legislation which is applicable to them for the details.

The policy is available on CSA members' web sites, including www.osc.gov.on.ca. For more information, please contact **Rossana Di Lieto**, Senior Legal Counsel, General Counsel's Office, (416) 593-8106, rdilieto@osc.gov.on.ca.

CSA Rule on Commodity Pools

Multilateral Instrument 81-104 and Companion Policy 81-104CP

The OSC has, under section 143 of the Securities Act (the Act), made Multilateral Instrument 81-104 Commodity Pools (the Instrument) a rule under the Act. The OSC also adopted Companion Policy 81-104CP (the Companion Policy) as a policy under the Act.

The Instrument and the material required by the Act were delivered to the Minister of Finance on August 7, 2002. The Minister may approve or reject the Instrument or she may return it to the OSC for further consideration. The Act gives the Minister until October 7, 2002 to do one of these things. If she approves the Instrument or takes no further action by that date, the Instrument will come into force in Ontario under section 11.1 of the Instrument on November 1, 2002. The Companion Policy will come into force on the date that the Instrument comes into force.

The Instrument and Companion Policy are initiatives of the Canadian Securities Administrators (the CSA). The Instrument has been, or is expected to be, adopted as a rule or regulation in each of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Newfoundland and Nova Scotia and as a policy in

all other jurisdictions represented by the CSA, other than Québec. All of the jurisdictions represented by the CSA, other than Québec, have adopted or expect to adopt the Companion Policy as their policy. The Commission des valeurs mobilières du Québec (the "CVMQ") participated closely in the development of the Instrument and the Companion Policy, but has not yet decided to adopt the instruments. Interested parties may contact staff at the CVMQ if they have any questions on the status of the Instrument and the Companion Policy in Québec.

The British Columbia Securities Commission did not adopt some sections of the Instrument. These sections deal with the rules for establishing new commodity pools, the proficiency requirements that apply to dealers in British Columbia selling securities of commodity pools in that province, and certain of the commodity pool prospectus and continuous disclosure requirements.

Revocation of OSC Policy Statement

The OSC has revoked OSC Policy Statement 11.4 Commodity Pool Programs (OSC Policy 11.4) effective the date that the Instrument comes into force. Pending the Instrument and Companion Policy coming into force, OSC Policy 11.4 will continue to operate as a guideline for commodity pools in Ontario.

For more information, please contact **Rebecca Cowdery**, Manager, Investment Funds Regulatory Reform, (416) 593-8129, rcowdery@osc.gov.on.ca

Securities Regulators Propose National Disclosure Rule

Public companies will have to abide by only a single set of securities requirements in filing their financial statements and other continuous disclosure documents, under a new national rule proposed by the Canadian Securities Administrators. "This single rule would make filing continuous disclosure documents simpler and less costly for companies that are reporting issuers in more than one jurisdiction," said CSA Chair Doug Hyndman.

The proposed rule — National Instrument 51-102 Continuous Disclosure Obligations — would end the situation in which companies must meet different disclosure requirements in multiple jurisdictions in which they report. The continuous disclosure documents that most companies must currently file include financial statements, annual information forms, management discussion and analysis (MD&A), material change reports and executive compensation statements.

Under the new rule, some continuous disclosure requirements would change significantly for companies. These changes include:

- Meeting shorter filing deadlines for annual and interim financial statements;
- Permitting companies that file with the U.S. Securities and Exchange Commission to file financial statements prepared in accordance with U.S. generally accepted accounting principles;
- Requiring new disclosure of significant business acquisitions; and
- Disclosing certain incorporating documents that affect the rights of shareholders.

"This rule would improve the consistency of disclosure in the securities markets," said Hyndman. "Having one set of continuous disclosure requirements is also a necessary first step to achieving an integrated disclosure system across Canada that would facilitate capital-raising."

The rule does not apply to investment funds and their continuous disclosure obligations, for which the CSA plans to issue a separate rule.

The CSA also published for comment a national rule – National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers — that would allow certain foreign issuers to satisfy Canadian continuous disclosure requirements by filing similar foreign documents. Regulators believe that a single set of exemptions would ease the compliance burden for foreign issuers and increase the investment opportunities available to Canadians.

The public comment period ends Sept. 19, 2002. The proposed rules may be viewed at the commission websites, including www.osc.gov.on.ca. For more information, please contact **Irene Tsatsos**, Senior Accountant, (416) 593-8223, itsatsos@osc.gov.on.ca or **Joanne Peters**, Senior Legal Counsel, (416) 593-8134, jpeters@osc.gov.on.ca.

Changes to Shareholder Identification and Communications

At present, an issuer generally cannot obtain the names of shareholders who hold its securities through a broker or other intermediary. National Instrument 54-101 (Communication with beneficial owners of securities of a reporting issuer) permits issuers, as of September 2002, to obtain from brokers the names of their shareholders who have not objected to being identified. In addition, it allows issuers holding shareholder meetings on or after September 1, 2004, to send meeting materials directly to these non-objecting shareholders. National Instrument 54-102 (Interim financial statement and report exemption) establishes procedures that will allow issuers to send interim financial statements and reports only to shareholders who specifically request the documents.

"These measures will allow issuers to determine who their shareholders are and to choose how to communicate with them," said Doug Hyndman, CSA Chair. "Shareholders can still remain anonymous but it will be their choice, and not the choice of their brokers."

The rules came into effect on July 1, 2002. As Quebec is still awaiting regulatory approval of the rules, it has enacted temporary exemptions to allow Quebec issuers to benefit from the harmonized standards.

The rules may be viewed at the commission websites, including www.osc.gov.on.ca. For more information, please contact **Winnie Sanjoto**, Legal Counsel, (416) 593-8119, wsanjoto@osc.gov.on.ca.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission.

Ontario Securities Commission Approves Settlement in the Matter of Mark Bonham and Bonham & Company Ltd.

The Ontario Securities Commission approved a settlement agreement reached between staff of the Commission and the Respondents Bonham and Bonham & Company Inc.

Bonham and Bonham & Co. were registered with the Commission as Investment Counsel/Portfolio Managers. Bonham acted as the Portfolio Manager of several mutual funds managed by Bonham & Co. and SVC O'Donnell Fund Management Inc. During the period July 31, 1997 to June 30, 1998, Bonham manually priced certain shares held by three mutual funds, namely, the Strategic Value Fund, The Canadian Equity Value Fund and the Dividend Fund.

SVC O'Donnell (now StrategicNova Funds Management Inc.) entered into a settlement agreement with Staff of the Commission in November of 2000 regarding its role in supervising the Respondents' actions.

In the Settlement Agreement, the respondents admitted they breached Ontario securities laws, and specifically s. 116 of the Securities Act. In particular, Bonham admitted that he failed to act in good faith and in the best interest of the mutual funds, failed to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances and Bonham & Co. admitted that it failed to properly supervise Bonham's actions. The respondents also admitted that they did not apply a specific, consistent or appropriate methodology in manually pricing the shares held by the funds, and that they did not maintain proper records of the methods used to manually price the shares.

The respondents' manual pricing resulted in the funds being materially overvalued by approximately $377,652.70. Full restitution of this amount was paid by StragicNova into the funds in late 2000, and investors have been fully compensated for any potential losses.

In its Order, the Commission approved the following sanctions:

- The respondents were reprimanded;
- The respondents have surrendered their registrations with the Commission as Investment Counsel/Portfolio Managers for a period of 3 years;
- The respondents have undertaken that they will not be involved, directly or indirectly, in the pricing or valuation of a mutual fund for a period of 3 years;
- If during the three year sanction period, either of the respondents are involved in initiating a mutual fund, they must disclose this settlement agreement in any public disclosure document or enabling instrument;
- Mark Bonham must cease trading in securities, except on his own account, for a period of 3 years;
- Mark Bonham cannot act as a Director or Officer of a registrant for a period of 3 years;
- The respondents have undertaken that, if at the end of the 3 year period, they are ever involved in the pricing or valuation of a mutual fund, they will be subject to appropriate supervision by another registrant of such valuation;
- Both respondents agreed to pay the sum of $150,000 to the Commission in respect of the costs of investigating this matter; and
- Both respondents agreed to make a voluntary payment in the amount of $50,000 to the Commission, to be allocated to purposes that will benefit investors in Ontario.

Speaking on behalf of the settlement panel, Vice-Chairman Paul Moore stated that while the manual pricing of securities held in mutual funds may be appropriate in limited circumstances, to do so without proper supervision, documentation or a consistent methodology poses a risk to the investing public.

Noting that this was a case of first impression before the Commission, or any other Canadian securities commission, Vice-Chair Moore stated that the settlement was in the public interest and sends an appropriate message to the mutual fund industry. This settlement, in the Commission's view, will "highlight the need to apply a specific and consistent methodology when pricing securities held in a mutual fund, as well as the need to maintain adequate records with respect to the determination of such prices."

Vice-Chair Moore also praised the settlement in that significant steps have already been taken by the respondents to eliminate any risk to the public, and the respondents' additional undertakings will help protect the investing public both during the duration of the present sanctions and well into the future.

Copies of the settlement agreement and final order are available on the Commission's website, www.osc.gov.on.ca, or from the Commission's offices at 20 Queen Street West, 19th Floor, Toronto.

OSC Issues Reasons For Order Against Mark Valentine

On July 31, 2002, the Ontario Securities Commission released reasons for its order dated July 8, 2002, issued against Mark Edward Valentine. Valentine was the Chairman and largest shareholder of Thomson Kernaghan & Co. Ltd. ("TK"). TK is now in bankruptcy.

On June 17, 2002 the Commission issued a temporary order suspending Valentine's registration as a stockbroker, and requiring him to cease trading in securities for a period of 15 days. On July 2 and July 8, 2002, the Commission convened a hearing to consider whether the temporary order should be extended. At the conclusion of the hearing, the Commission extended the temporary order until at least January 31, 2003, to allow staff to continue their investigation of Valentine's actions.

The order also provides that the exemptions contained in Ontario securities laws do not apply to Valentine for the same period, provided that he may trade in certain securities for his own account, or for the account of his RRSP or RRIF. The order states that, if a hearing before the Commission is not commenced by January 31, 2003, staff of the Commission may apply to have the order further extended.

In its reasons for decision, the Commission reviewed the evidence presented concerning Valentine's role as the Registered Representative for four private funds, namely the Canadian Advantage Limited Partnership, Advantage (Bermuda) Fund Ltd., VC Advantage Fund Limited Partnership and the VC Advantage (Bermuda) Fund Ltd. It also considered evidence concerning Valentine's role in the financing of JAWZ Inc.

The Commission found that it was "satisfied that staff has provided sufficient evidence of conduct that may be harmful to the public interest and, accordingly justifies an extension of the temporary order. There is little doubt that additional time is required to complete the investigation and, unless the temporary order is extended, there is a reasonable likelihood that Valentine's alleged objectionable conduct may continue. Such conduct would present a serious risk to the integrity of Ontario's capital markets as well as to the protection of the public interest".

Copies of the reasons for decision are available on the Commission's website at www.osc.gov.on.ca or from the Commission's offices at 20 Queen Street West, Toronto.

Ontario Division Court Dismisses All Grounds Of Appeal By Marchment & Mackay, Charles Ornstein And Amit Sofer

On July 16, a three member panel of the Ontario Divisional Court released Reasons for Judgment in an Appeal of a Commission decision, Marchment & MacKay v. Ontario Securities Commission. At the hearing held on June 24, 2002, the Divisional Court dismissed all grounds for appeal raised by Marchment & MacKay, Charles Ornstein and Amit Sofer and awarded costs of $20,000 to be paid to the Ontario Securities Commission by July 24, 2002.

"We are not convinced that the appellants have demonstrated that they have been prejudiced at any material way as to how the proceedings were conducted in the circumstances prevailing. The appeal is dismissed."

Oral reasons for judgement, Farley, Then and Linhares de Sousa JJ., Ontario Superior Court of Justice, June 24, 2002.

The Divisional Court considered whether the disclosure made by staff was adequate, and referred to the decision of the Ontario Court of Appeal in Deloitte & Touche v. Ontario Securities Commission (released June 13, 2002). The reasons stated that "even if there was a failure in the disclosure obligation, there was no prejudice to the appellants... The case against the appellants was the testimony of ten witnesses who were strangers to each other and of various backgrounds. In circumstances where no collusion is alleged, these witnesses individually and cumulatively testified to a detailed and extensive pattern of similar conduct in sales practices that in our view constituted an overwhelming case against the appellants."

The appeal was from a decision made August 3, 1999 in which the Commission found, among other things, that Marchment & MacKay, Ornstein, and Sofer had breached the duties owing to their clients and failed to act honestly, in good faith and in the best interests of their clients. The Commission ordered that, among other things:

- Marchment & MacKay's registration be terminated and any exemptions under Ontario securities law were permanently no longer available;
- Ornstein's registration was terminated and any exemptions under Ontario securities law were permanently no longer available, providing that after two years Ornstein could trade on a restricted basis on his own account and in his RRSP; and
- Sofer's registration was suspended and any exemptions under Ontario securities laws were not available for a period of ten years, provided that after one year Sofer could trade on restricted basis on his own account and in his RRSP.

Copies of the reasons for judgment are available on the Commission's website at www.osc.gov.on.ca or from the Commission, 20 Queen Street West, Toronto.

OSC Approves Settlement Between Staff And Blair Taylor

On July 18, 2002, the OSC approved a settlement reached by staff of the Commission and the respondent (John) Blair Taylor.

Taylor agreed that he acted contrary to the public interest by failing to:

- keep the proper books and records;
- establish and implement the appropriate controls and procedures; and
- adequately supervise his staff.

The Commission reprimanded Taylor and ordered that Taylor be prohibited from becoming or acting as a director or officer of any issuer for two years. As terms of the settlement, Taylor must also pass the Partners, Directors and Officers examination and pay $7,500 in costs to the Commission.

The Commission expressed the view that it was appropriate for staff to bring this proceeding since it is in the public interest that senior management be accountable for investment activities. The settlement approval acknowledges the importance of vigilance in the accurate capture, recording and accounting of trading activities. "It is important that members of senior management, whether registered or acting in a professional capacity, ensure that the firm establishes suitable systems of internal control," said Brian Butler, Manager of Investigations, Enforcement Branch.

Copies of the Order and Settlement Agreement are available on the Commission's website at www.osc.gov.on.ca or from the Commission offices at 20 Queen Street West, Toronto.

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The OSC Website, www.osc.gov.on.ca includes:
Information on the OSC; Investor Information, Rules and Regulations, Enforcement Information and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 6, Issue 1

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inside...

OSC Chair Applauds MacKay Report

OSC Chair David Brown has expressed support for the report recently issued by Harold MacKay on a process to improve Canada's securities regulatory framework .....page 2

OSC Proposes New Relationship Between Investors and Advisers

Changing market conditions and other factors are driving the need to change the relationship between investors and their advisers, says the OSC ...page 2

OSC Publishes Brochure On RESPs

The OSC has launched a multilingual brochure to help investors understand the risks associated with Registered Education Savings Plans .....page 3

Gordon Thiessen To Chair CPAB

Gordon G. Thiessen, former Governor of the Bank of Canada, has agreed to serve as the founding Chair of the Canadian Public Accountability Board ....page 3

Review of Executive Compensation Disclosure

The CSA has revealed the results of a review of how well companies comply with executive compensation disclosure requirements.....page 4

FEATURE

Proposed Legislation to Increase OSC Powers

The Ontario Ministry of Finance has proposed a comprehensive legislative package to bolster the protection of Ontario investors.

The proposed measures include:

- Tougher penalties to ensure compliance with Ontario's securities laws. Maximum court fines for general offences would increase to $5 million from $1 million and maximum prison terms would increase to five years less a day from two years;
- New powers that would give the OSC the authority to impose administrative fines of up to $1 million for securities law violations and order that offenders give up the profits they have gained from those violations;
- Stronger powers for the OSC to review the information that public companies disclose to investors;
- Greater clarification of offences such as securities fraud and market manipulation, and making misleading or untrue statements;
- Broader rights for investors to sue if companies make misleading or untrue statements or fail to give full and timely information; and

(continued on page 8)

INDEX

Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets.

OSC Chair David Brown Applauds MacKay Report

OSC Chair David Brown expressed support for the report issued November 19, 2002 by Harold MacKay to federal Finance Minister John Manley. The report, which the Finance Minister immediately shared with his provincial counterparts, concludes consultations held across the country on a process to improve Canada's securities regulatory framework.

"Mr. MacKay's recommendations are timely," said Mr. Brown. "They recommend a consensus-based approach to resolve issues and bring national unity to our fragmented securities regulatory system. Mr. MacKay clearly recognizes the need to focus Canadians from all provinces and territories on the importance of building a system that unifies regulation for Canadian investors and issuers."

OSC Launches Investor Guide On Roles, Rights and Responsibilities of Market Participants

A new Investor Guide released by the OSC in September 2002 helps investors understand their rights and responsibilities and clearly outlines the role of the Ontario Securities Commission as the investment industry's watchdog.

Roles, Rights and Responsibilities helps investors understand how the *Securities Act* sets out the rules, policies and procedures that govern the financial markets. It explores the mandate of regulatory bodies that oversee the industry and the responsibilities of companies that issue securities as well as dealers and advisers. It also stresses to investors that while there are rules and oversight of those rules in place to protect them, there are certain steps they should take to protect themselves.

Roles, Rights and Responsibilities is available free of charge as part of the OSC's Investor Education Kit. It is the sixth in the OSC's Guide for Investors series, which includes *An Investor's Guide to OSC Resources and Services, A Step-by-Step Guide to Making a Complaint, Borrowing to Invest: Understanding Leverage, Financial Disclosure: What You Need to Know* and *Dealers and Advisers: With Whom Are You Dealing for Your Investment Services?*

Investors can request a free Investor Education Kit by calling 1-877-785-1555 or they can view all OSC investor resources, including the new guide, on the OSC's web site at www.osc.gov.on.ca. The new guide is located on the Required Reading page of the Investor Resources section.

OSC Proposes New Relationship Between Investors And Advisers; Launches Web Site for Consultations

Changing market conditions, heightened investor expectations and pressures on the financial services industry are driving the need to change the relationship between investors and their advisers, says the OSC. The new relationship was described in a proposed Fair Dealing Model, released for comment by the OSC in October 2002.

"Investors who count on corporations and the investment industry to protect their retirement savings need to trust the system for a fair deal," said David Brown, OSC Chair. "Securities regulations in Ontario have focused on products and transactions for more than thirty years. We are proposing a new approach, focused on the relationship between investors and their service providers," added Mr. Brown.

The Fair Dealing Model presents three basic relationship models:

The Managed-For-You relationship puts primary responsibility on the adviser.

- Investors surrender control of their accounts to expert managers who do not consult with them trade-by-trade.
- The managers, who have a trustee level of fiduciary duty, are responsible for deep knowledge of their clients and their circumstances.
- The portfolio policy agreed to in the Fair Dealing Document becomes their guidelines.
- Compensation is typically fee-based.

In the Advisory relationship, responsibility is shared between the adviser and investor.

- Both parties must agree to all trades.
- The adviser has a responsibility to educate the client about investment basics, and to learn the client's needs, resources and tolerance for uncertain outcomes.
- The investor has a responsibility to provide adequate information to the adviser.

- There can be a variety of ways the adviser is compensated, subject to mutual agreement.

The Self-Managed relationship puts primary responsibility on the investor.

- Investors take complete responsibility for all trades and the impact on their portfolios.
- The provider has no responsibility to know the client's circumstances or align investment decisions with tolerance for uncertainty.
- But the provider is required to be truthful, to reveal potential biases in the information it provides, to make its compensation structure transparent, and to stand behind the technical reliability of the trading technology and tools it may offer.

Under the Fair Dealing Model, an adviser can only have one type of relationship with a client at one time, but an investor could have relationships with several advisers, to benefit from differing investment strategies. For example, a more conservative investor may entrust the majority of his or her portfolio to an adviser under a "Managed for you" relationship, and also set up a self-managed account with another broker under an "advisory" relationship.

The OSC is consulting on the proposed Fair Dealing Model by issuing a report for comment by industry experts. As well, to solicit feedback from investors and front-line investment industry staff, the OSC unveiled a cutting edge interactive web site that uses the latest animation software to bring client-adviser interactions to "virtual life". Go to http://www.fairdealing-model.com or http://www.osc.gov.on.ca to bring the Fair Dealing Model to life on your screen.

The Fair Dealing Model requires the adviser or institution to provide educational opportunities to the investor. "We provide generic online documents that investment firms could easily apply as they deploy Fair Dealing principles throughout their client business," said Julia Dublin, Senior Legal Counsel. These include model "Inform Your Client" documents about the basics of equities, mutual funds and bonds as well as the fundamentals of investment risk.

Comments on the Fair Dealing Model are requested by December 31, 2002.

New Brochure Addresses Concerns About RESPs

In response to investor concerns, the OSC recently introduced a new multilingual brochure to help investors understand the risks associated with Registered Education Savings Plans (RESPs), including often-misunderstood Pooled Group Scholarship Trust Plans.

Saving for your child's education: Get the facts about RESPs before you invest discusses Self-Directed RESP accounts, Pooled Individual and Family Scholarship Trust Plans, and Pooled Group Scholarship Trust Plans, in the context of risk and return, costs, and cancellation policies. The OSC's Contact Centre often receives inquiries from investors who do not understand the plans they have signed up for, the fees they could potentially pay if they stop payments and the risks they are taking with their money. This new brochure will raise awareness about these important issues.

"The RESP market has grown quickly over the past few years, and we feel it's important for all investors to have a thorough understanding of what they're getting into," said Terri Williams, Manager, Investor Education at the OSC. The OSC has recognized that misunderstandings are often due to communication breakdown between the scholarship plan dealers the OSC registers and their clients. Therefore, in addition to English and French, the OSC is offering this brochure in Chinese, Russian, Tamil and Polish to help Ontario's growing ethnic communities understand RESP options.

In addition to specific information about the types of RESPs, the brochure also provides general tips and an outline of the Canada Education Savings Grant available to RESP investors. "We hope to raise awareness across Ontario that there are issues investors need to know about with certain types of RESPs," said Williams.

Investors can request a free copy of *Saving for your child's education* by calling 1-877-785-1555 or they can view the material on the OSC web site at www.osc.gov.on.ca. The brochures can be found on the Required Reading page of the Investor Resources section.

Gordon Thiessen to Serve as Founding Chair of the Canadian Public Accountability Board

On October 31, 2002, Gordon G. Thiessen, former Governor of the Bank of Canada, agreed to serve as the founding Chair of the Canadian Public Accountability Board (CPAB), announced David Brown, Chair of the Ontario Securities Commission and the Chair of the Council of Governors of the CPAB. His appointment is for an initial term of three years. Mr. Thiessen will now work with the Council of Governors in completing a search to fill the remaining Board positions.

The mission of the CPAB is to contribute to public confidence in the integrity of financial reporting of Canadian public companies by promoting high quality, independent auditing. The members of the Board of the CPAB will oversee the design, implementation and enforcement of a system of independent inspection of auditors of Canada's public companies. To ensure appropriate transparency, the CPAB will report annually to the public on the conduct of its activities and the results achieved.

The Council of Governors also includes the Chair of the Canadian Securities Administrators, Douglas Hyndman; the former Chair of the Commission des valeurs mobilières du Québec, Carmen Crépin; the federal Superintendent of Financial Institutions, Nick Le Pan; and the President and CEO of the Canadian Institute of Chartered Accountants, David W. Smith, FCA.

Mr. Thiessen's 35 years of service at the Bank of Canada culminated in a seven-year term as its Governor from 1994 to 2001. Originally from Saskatchewan, Mr. Thiessen holds a PhD in Economics from the London School of Economics and has been awarded honorary doctorates from the University of Saskatchewan and the University of Ottawa. He serves on a number of corporate and other boards, including the Board of Governors of the University of Saskatchewan, where he lectured in economics in 1962, following his undergraduate and graduate studies in economics at that institution. He is the recipient of the government of Sweden's Order of the Polar Star in recognition of the assistance provided by the Bank of Canada to the Swedish central bank. During his tenure as Governor, Mr. Thiessen was recognized as contributing greatly to a more transparent and open Bank of Canada, a record that positions him very well for his new role at the CPAB.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The Canadian Securities Administrators (CSA) is the national organization representing the 13 provincial and territorial securities commissions.

Regulators Require Companies To Improve Executive Compensation Disclosure

On November 5, 2002, securities regulators revealed the results of a review of how well publicly-traded companies comply with executive compensation disclosure requirements. The Canadian Securities Administrators (CSA) found that 95 per cent of companies studied tended to discuss executive compensation in very general terms, without explaining specifically how compensation was determined or how it related to the companies' performance.

"The compensation committee reports need improvement by the vast majority of companies we examined," said Doug Hyndman, Chair of the CSA. "We issued comment letters to these companies and received commitments from them to improve their disclosure, including explaining clearly their reasons for the salaries and bonuses paid, the options granted and the other compensation awarded to their executive officers. I trust that all issuers will note our findings and raise the bar on their compensation disclosures."

Boilerplate language used in company reports

For example, the following two extracts from different reports do not give a reader much insight into how the issuers determine compensation. The use of generalities and the absence of specific required compensation information significantly decrease the value of these disclosures:

Example 1

"The Board of Directors is of the view that the Executive Compensation Plan is appropriate for the Company in that it provides an adequate level of motivation for the executive officers."

Example 2

"Base salary levels for all executive officers (including the Executive Chair and CEO) are based upon performance and in relation to comparable positions within the industry and in the markets in which the Corporation operates..."

Other deficiencies (% of companies) noted in the study concerned the following areas:

- 7% required to correct the summary compensation table;
- 5% required to correct the information on options or stock appreciation rights (SARs);
- 5% required to correct the pension plan information; and
- missing disclosure of details of employment contracts or termination agreements, using an incorrect measurement point in the presentation of multi-year performance data, or missing cross-references to information presented elsewhere in the reports.

Examples of the types of information that the study examined include:

- The specific relationship between corporate performance and executive compensation;
- If an executive is rewarded under a performance-based plan despite failing to meet the stated performance criteria, the reasons for any waiver or adjustment to the compensation formula;
- The basis for the CEO's compensation, including the factors and criteria on which the compensation is based and the relative weight assigned to each factor; and
- The competitive rates on which the CEO's compensation is based if it is determined by assessments of competitive rates, as well as information about how the comparative group was selected and at what level in the group the compensation was placed.

"Recent scandals in the United States have given prominence to the gap between the level of information companies provide on executive compensation and the level that investors require," said Hyndman. "Our coast-to-coast review of executive compensation disclosure revealed areas where Canadian companies can improve their disclosure practices. We will monitor compensation disclosures to ensure they meet the requirements."

The CSA Staff Notice 51-304 "Report on Staff's Review of Executive Compensation Disclosure" (in PDF) is available from the OSC website (www.osc.gov.on.ca).

CSA Publishes New Rules On Investment Fund Continuous Disclosure

The CSA published for comment a draft Rule on investment fund continuous disclosure. The proposed regime is aimed at providing investors and their advisers with timely and useful information to better assess an investment fund's performance, position and future prospects, by presenting financial and non-financial information for all types of investment funds in the same format. The new regime also harmonizes the reporting requirements for investment funds across jurisdictions.

The draft Rule applies to all types of investment funds, including but not limited to, mutual funds, exchange traded funds, split share corporations, labour sponsored investment funds, closed end funds and scholarship plans. Some key measures detailed in the draft Rule include:

- The introduction of narrative annual and quarterly management reports of fund performance.
- The elimination of mandatory delivery of financial statements.
- The right of investors to choose whether to receive financial statements and management reports of fund performance.
- The reduction of filing times to 90 days for annual and 45 days for interim financial statements, which delays will be the same for filing of management reports of fund performance.
- The removal of sometimes outdated performance information and financial highlights from mutual fund simplified prospectuses.

Proposed National Instrument 81-106, Form 81-106F1 on the contents of annual and quarterly management reports of fund performance and Companion Policy 81-106, were published on September 20 for public comment by December 19, 2002. The proposed rules may be viewed at the OSC website (www.osc.gov.on.ca).

Securities Regulators Reward Young Canadians for Investment Savvy

Canada's securities regulators are raising the awareness of investing concepts among young Canadians with *the Test your Financial I.Q. Contest* launched October 28, 2002.

The contest's goal is to encourage Canadians from 14 to 18 years of age to learn more about investing. Sponsored by the CSA, the contest runs until Jan. 31, 2003. To participate, young people must submit, in English or French, a 500- to 750-word essay answering the following contest question:

Q. If you win the contest prize of $2,500 and decide to invest, which financial products might interest you most and why?

Please consider:

- What is your financial goal?
- How much time do you have to meet this financial goal?
- What type of risk are you willing to take?
- Have you diversified your investments?
- What is your desired return?

Contestants are also asked to give their views on whether it is important for young Canadians to learn about investing at an early age. A total of 13 provincial prizes of $750 each and a national grand prize of $2,500 will be awarded next April during Investor Education Month.

"The CSA's theme for all investor education initiatives is 'investigate before you invest,'" says CSA Chair Doug Hyndman. "This contest encourages young Canadians to start the investigation process."

The contest rules and the entry form can be found in the Investor section of provincial securities commission websites or on the CSA website at www.csa-acvm.ca.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission.

OSC Appeal in the Matter of Regina v. John Bernard Felderhof

The OSC filed a Notice of Appeal with the Court of Appeal for Ontario with respect to this matter on November 28, 2002. The appeal is in response to a decision by Justice Archie Campbell not to remove the provincial court judge now presiding over the long-standing case involving John Felderhof, former chief geologist for Bre-X Minerals Ltd.

Copies of the Notice of Appeal are available from the Court of Appeal office at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

OSC Order in the Matter of Lydia Diamond Exploration of Canada Ltd., Jurgen Von Anhalt and Emilia Von Anhalt

The OSC issued an order on November 19, 2002 in the matter of Lydia Diamond Exploration of Canada Ltd., Jurgen Von Anhalt and Emilia Von Anhalt.

The order cease trades securities of Lydia Diamond Exploration by Lydia for three years except as specifically permitted in the order. The order cease trades the von Anhalts for 12 years except as specifically permitted in the order. The von Anhalts are ordered to resign all positions as an officer or director of any issuer. They are further prohibited from becoming an officer or director of any issuer for 15 years. Lydia and the von Anhalts are reprimanded and ordered to make a total payment of $225,000 in costs.

Copies of the Order and the Statement of Allegations are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

OSC Proceedings in Respect of Livent Inc. et al

Following a hearing before the OSC in respect of Livent Inc., Garth H. Drabinsky, Myron I. Gottlieb, Gordon Eckstein and Robert Topol, the Commission ordered on November 15, 2002 that the proceeding before the Commission is adjourned sine die, pending the conclusion of the trial of the Criminal Code charges in respect of Drabinsky, Gottlieb, Eckstein and Topol.

Copies of the Notice of Hearing issued on July 3, 2001 and Statement of Allegations, and the Order of the Commission made on November 15, 2002, are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

OSC Approves Settlements between Staff and John Douglas Kirby, Michael Kennelly, Allan Dorsey and David Bending

The OSC approved four settlements on October 10, 2002 reached by staff of the Commission and the respondents John Douglas Kirby, Michael Kennelly, Allan Dorsey and David Bending. All these respondents were registered with the Commission to trade securities during the material time. Currently, only Allan Dorsey and David Bending are registered with the Commission.

The respondents sold Saxton securities to Ontario investors. None of these sales were booked through their respective sponsor firms. These respondents participated in illegal distributions of securities and engaged in other conduct contrary to Ontario securities law and the public interest.

Among other things, John Douglas Kirby engaged in an advertising campaign directed at seniors. In so doing, Mr. Kirby misrepresented to prospective clients the nature of the Saxton investment product. Mr. Kirby is prohibited from trading in any securities for twelve years except that after three years he may trade securities in his personal account. Mr. Kirby also is prohibited from becoming or acting as an officer or director of an issuer for twelve years. Mr. Kirby gave a written undertaking to the Commission that he will not apply for registration in any capacity for twelve years.

Among other things, Michael Kennelly actively solicited clients to move money out of secure investments to purchase the Saxton securities. Mr. Kennelly is prohibited from trading in any securities for eight years except that after two years he may trade securities in his RRSP account. Mr. Kennelly also is prohibited from becoming or acting as an officer or director of an issuer for eight years. Mr. Kennelly will pay $2,500 in costs and gave a written undertaking to the Commission that he will not apply for registration in any capacity for eight years.

The Commission reprimanded Allan Dorsey and ordered that his registration be suspended for ten months. Mr. Dorsey must successfully complete the Canadian Securities Course before his registration will be reinstated. Mr. Dorsey was reprimanded and paid costs in the amount of $1,500.

The Commission reprimanded David Bending and ordered that his registration be suspended for eight months. Mr. Bending must successfully complete the Canadian Securities Course before his registration will be reinstated. Mr. Bending was reprimanded and paid costs in the amount of $2,000.

The settlement hearing respecting the respondent Douglas Cross was adjourned to a date to be fixed.

Copies of the Notice of Hearing, Statement of Allegations of Staff of the Commission and Settlement Agreements are available on the Commission's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, 19th Floor, Toronto.

OSC Approves Settlement in the Matter of BMO Nesbitt Burns Inc.

On September 23, 2002, the OSC approved the settlement agreement reached between staff of the Commission and BMO Nesbitt Burns Inc. The agreement follows an enforcement action initiated Wednesday, September 18, 2002, in which OSC staff alleged that the respondent acted contrary to the public interest and contrary to Ontario securities law.

BMO Nesbitt Burns Inc. failed to adequately supervise the Lett accounts and Dunn's actions in relation to the Lett accounts, contrary to the public interest and contrary to sections 1.2, 1.5 (a) and 3.1 of Ontario Securities Commission Rule 31-505. Robert W. Davis, Chair of the OSC panel that approved the settlement, told the hearing that "it was in the public interest" to approve the settlement agreement.

BMO Nesbitt Burns Inc. has agreed to the following sanctions:

- Nesbitt will make a voluntary payment to the Commission in the amount of $100,000;
- Nesbitt is reprimanded by the Commission;
- Nesbitt will identify and implement new policies with respect to internal compliance reviews and non-trading activities in clients' accounts to address concerns identified by Staff. Nesbitt will report to staff within six months of the date of the order of the Commission approving this settlement agreement identifying the policies and procedures that have been implemented;
- Nesbitt will pay $45,000 in respect of the costs of the investigation.

Copies of the Notice of Hearing issued by the Ontario Securities Commission, Statement of Allegations filed by Commission Staff, the Settlement Agreement and the Order made by the Commission are available at www.osc.gov.on.ca.

OSC Panel Suspends Donnini for 15 Years

An OSC panel suspended for 15 years the registration of Piergiorgio Donnini, a former head trader at Yorkton Securities Inc. on September 12, 2002. The tribunal had found on June 11, 2002 that Donnini acted in contravention of the Ontario *Securities Act* and contrary to the public interest. Specifically, the panel found that in early 2000, Mr. Donnini had knowledge of a potential financing for Kasten Chase Applied Research Limited (KCA) that had not been disclosed to the public. The panel agreed that Mr. Donnini traded in KCA shares while he had this information and as such, he acted contrary to the public interest.

The Commission imposed the following sanctions:

- Donnini's registration under Ontario securities law is suspended for a period of 15 years;

- Donnini must cease trading in securities for a period of 15 years, except that he is permitted to trade in personal accounts in his name in which he has sole beneficial interest, and in registered retirement savings plans in which he, either alone or with his spouse, has sole beneficial interest;
- Donnini must resign all positions that he holds as a director or officer of an issuer that is a registrant, or that directly or indirectly holds more than a 5% interest in a registrant;
- Donnini is prohibited for 15 years from becoming or acting as a director or officer of any issuer that is a registrant, or that directly or indirectly holds more than a 5% interest in a registrant;
- Donnini must pay costs of the Commission in the amount of $186,052.30 in relation to the investigation and conduct of the hearing in this matter.

In explaining the reasons for the sanctions, Paul Moore, Vice-Chair of the OSC and Chair of the panel, said: "Donnini was an experienced trader. He was the fourth-largest shareholder of Yorkton, the senior liability trader and the senior institutional trader of Yorkton. As we previously stated, he was more a chief lieutenant than a common foot soldier. [...] He was trading on a massive scale while in possession of confidential material information."

"Donnini was well positioned to recognize the seriousness of the impropriety of trading KCA shares with material undisclosed information contrary to section 76(1) of the Act," concluded Moore.

Staff of the Commission wish to acknowledge the valuable contribution of staff of Market Regulation Services Inc. in identifying this matter and assisting the OSC in its investigation. The cooperation exhibited in this investigation effectively demonstrates how regulators can work together to resolve complex cases that overlap jurisdiction.

A copy of the Commission's decision and its written reasons (in PDF or in Word) in this matter, the Notice of Hearing and Statement of Allegations and the decision of the Commission of June 11, 2002 in respect of this matter, are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

RECENT SPEECH

Excerpts from remarks by David A. Brown, Chair, Ontario Securities Commission
Standing Senate Committee on Banking, Trade and Commerce (Ottawa, October 30, 2002)

I appreciate this opportunity to discuss with you the need to restore confidence in our capital markets in light of the recent financial scandals in the United States.

The OSC and other regulators are working with governments, industry stakeholders and investors to implement reforms that inspire investor confidence and protect investors. If we are going to attract investors - both foreign and Canadian - they must have confidence in the safety of our markets. At the same time, if we are going to attract issuers, we need a regulatory system that is not too burdensome or costly. That is the balance we must achieve to ensure our markets remain competitive.

The problem is that parts of our regulatory system are flawed — providing incentives that individuals find hard to ignore.

We need to analyze these flaws in the system and correct them. We need to do that with surgical precision. The Sarbanes-Oxley Act has done precisely the same thing – cleaning up the flaws, discrepancies and weaknesses in the U.S. market. We need to determine the exact regulatory remedies that are right for Canadian markets.

It is important of course, that we reassure U.S. regulatory authorities of the integrity of our market. Such confidence is essential to maintaining the Multi-Jurisdictional Disclosure System, under which Canadian-based issuers are able to access U.S. capital markets simply by complying with Canadian listing and disclosure requirements. I am pleased to tell you that the OSC and the SEC are engaged in an active dialogue regarding the cross-border issues raised by Sarbanes-Oxley. The SEC is interested to learn how Canada proposes to deal with the issues addressed by Sarbanes-Oxley, and whether there will be any substantial conflicts between the two regimes. We understand that the SEC is prepared to consider ways to accommodate home country requirements and regulatory approaches where appropriate.

There are six principal areas where significant progress is being made:

- Audit Committee Roles and Composition;
- CEO Certification;
- Public Oversight of Auditors;
- Auditor Independence;
- Broadened Sanctions for Wrongdoing; and
- Civil Liability for Continuous Disclosure.

I'd like to touch on each of those areas, in reverse order.

We are pleased that the Ontario government introduced legislation that empowers consumers, strengthens our enforcement capabilities and gives the Commission additional tools to protect investors and restore confidence. The legislation proposes to amend the *Securities Act* to provide for civil liability for secondary market disclosure. This will provide rights of action to secondary market participants that represent the overwhelming majority of capital market activity.

Second, the legislation proposes to strengthen the OSC's enforcement capabilities with: new powers to impose a maximum fine of $1 million for violations of the Securities Act; increasing the maximum jail term for insider trading from two years to five years; clarifying offences such as securities fraud, market manipulation, and misleading financial statements; and giving the Commission the authority to order firms to disgorge profits made as the result of illegal activity.

Third, in the area of auditor independence, the Public Interest and Integrity Committee of the Canadian Institute of Chartered Accountants has issued an exposure draft containing proposed new Canadian independence standards for auditors. Although the CICA's independence project began before the string of corporate failures in the US and

the passage of Sarbanes-Oxley, its proposals contain many of the new independence requirements now mandated in the U.S. The CICA has undertaken to consider adding additional requirements now set out in Sarbanes-Oxley.

Fourth, in the area of public oversight of auditors, this past summer federal and provincial regulators and the Canadian Institute of Chartered Accountants announced the creation of a Canadian Public Accountability Board to oversee auditors of public companies across Canada. The Board will be responsible for regularly reviewing the audit practices of firms auditing public companies. Where appropriate, the Board will work with provincial institutes and regulators to impose remedial measures and sanctions.

Thus of the six issues I identified, two – civil liability and sanctions for wrongdoing – are now legislative initiatives, two – auditor independence and public oversight — are being addressed on separate tracks. We fully support the Ontario government on the legislative initiatives and we will continue to monitor and support the other two initiatives. Much of our attention is now focused on the remaining two issues - certification and audit committees.

Let me start with the issue of requiring CEOs and CFOs to certify that their company's financial disclosure fairly presents its financial condition.

The U.S. legislation that requires CEO and CFO certification is a first. Up until now, auditors have only vouched for the fact that a company's statements are presented fairly in accordance with Generally Accepted Accounting Principles. U.S. executives must now assure investors that information given to the public is a fair representation of the financial condition of the company. They must also give assurances about the adequacy of the company's internal controls. Canadian investors expect and demand the same qualitative assurances.

The final issue I want to discuss is the role and composition of the audit committee.

Auditors must be responsible to shareholders. Technically, that is how it should work. In reality, shareholders are too widely dispersed to direct the auditors. Management has been taking on that role - but it is management that the auditors are supposed to be scrutinizing.

Led by Sarbanes-Oxley, there is now a move world-wide to transfer this function to a body independent of management. In many countries, this will be the audit committee. In short, the audit committee – independent of management – will be the proxy for the shareholders. The audit committee will become the auditor's client - not management. The audit committee will hire and fire the auditor. It will direct the performance of the audit.

The audit committee must be truly independent of management. It must be able to say no to management.

Investors and issuers need to know that we will be taking pro-active steps to ensure a safe market as well as a dynamic one. A robust economy needs both people who are prepared to invest capital and people who are able to use it to create wealth.

I am pleased to have been invited to brief you on some of the changes that are being implemented and some that are being considered. I look forward to your questions.

(Proposed Legislation to Increase OSC Powers, continued from page 1)

- New rule-making powers for the OSC to hold CEOs and CFOs accountable for the accuracy of their financial statements.

The government announced it would also be consulting on further measures, including:

- Reforms to the regulation of public accounting in Ontario to ensure that standards continue to be internationally respected and reflect the high expectations of businesses and investors; and
- Changes to the Ontario *Business Corporations Act* that are consistent with the Ontario *Securities Act* reforms and that will add strength to the legal rights and remedies of shareholders.

The government will also be moving forward with measures to ensure high accountability standards for the public sector. As well, the government will continue to work with Ottawa and the other provincial governments to examine a national approach to securities regulation to help reduce red tape and provide more uniform securities laws.

Perspectives is published quarterly by the Communications Branch of the Ontario Securities Commission.

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The OSC Website, www.osc.gov.on.ca includes: Information on the OSC, Investor Information, Rules and Regulations, Enforcement Information and Market Participants.

ONTARIO SECURITIES COMMISSION

Government Publications

Volume 6, Issue 2

PERSPECTIVES

SPRING 2003

inside...

New Financings More Than Triple To $21 Billion

Reforms to the regulations governing how enterprises raise capital contributed to a tripling of investments, concludes an OSC report.....page 2.

OSC Publishes Risk-Based Criteria for Reviews

The OSC has published the risk-based criteria that staff uses to determine whether to conduct detailed reviews of market participants and their activities.....page 3.

Office of International Affairs Established

The OSC has established an Office of International Affairs that will play a strategic role in the development of the OSC's international regulatory initiatives and will help provide foreign regulators with information about securities regulation and markets in Ontario .....page 3.

On-Line Insider Reporting System (SEDI) to Speed Reports, Add Transparency

The System for Electronic Disclosure by Insiders (SEDI) will improve public access to insider trade reporting.....page 6.

FEATURE

Streamlined and Reduced OSC Fees as of March 31, 2003

The OSC's new fee model took effect March 31, 2003, reducing regulatory costs for market participants. The new fee schedule is simpler to understand and also allocates costs more fairly among market participants.

"We are fulfilling our commitment to streamline our fee schedule and charge fees that better reflect the services we provide," OSC Executive Director Charlie Macfarlane said. "Costs will increase for some market participants and decrease for others, but overall, costs for market participants are expected to go down by as much as 20 per cent based on current revenues."

Macfarlane noted that the OSC has already implemented across-the-board fee reductions of more than 20 per cent over the past three years. Previous fee reductions included:

- In June, 2000, a 10 per cent across-the-board fee reduction;
- In August, 1999, a 10 per cent across-the-board fee reduction.

(continued on page 11)

INDEX

Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets.

Howard Wetston to Chair Ontario Energy Board

OSC Vice-Chair Howard Wetston is appointed to the position of Chair of the Ontario Energy Board effective on June 30, 2003, allowing him to complete several important OSC initiatives that he now has under way. Since his appointment as Vice-Chair at the OSC in January 1999, he has made a large and valuable contribution to our success.

It is with mixed feelings that we see Howard taking on this important new role. His thoughtful approach to policy issues, his leadership in the strengthening of our tribunal processes and, not least of all, his quiet sense of fun will be missed. However it is wonderful to see him get this recognition. It's also wonderful to see Ontario putting a strong leader into the OEB because leadership is going to be very important in the coming years in that organization.

As a member of the Ontario and Alberta Bars, Howard Wetston was appointed Queen's Counsel in 1990, and has extensive experience in economic regulation and administrative law. Most recently he was a Judge of the Federal Court of Canada. Our Commissioners and staff all wish Howard the best of luck in his new role.

David Brown, Chair, OSC

New Financings More Than Triple to $21 Billion, Benefiting Businesses in Ontario

Reforms to the regulations governing how enterprises raise capital contributed to a tripling of investments, concludes an Ontario Securities Commission report released April 21, 2003. By focussing investment eligibility on the investors' means rather than on a minimum threshold value for transactions, Ontario saw a jump of thousands more investments in 2002 over the previous year, pumping an additional $15 billion into enterprises in Ontario.

The report concluded that transactions grew from an annual average of 1,287 transactions from 1995 to 1998, with an annual average value of $6.2 billion, to 3,528 transactions worth $21 billion in an 11-month period in 2001-2002. A separate OSC-commissioned study showed that of the total financings, $2.6 billion went to small and medium enterprises in 2002, generating 16,500 jobs in 2002, and forecast to generate a further 19,400 new jobs in 2003 when the lagged impact on employment gains traction. As well, the report suggests an increase of 0.56% in Ontario's GDP for 2002, and a further 0.5% GDP growth for 2003.

In particular, the study reports:
- total trading increased;
- the average size of transactions increased;
- more small and large transactions are noted;
- almost half of the transactions are valued below the previous minimum threshold of $150,000.

Under the new policy, accredited investors include accredited financial institutions and loan or trust corporations, insurance companies, governments, registered charities, securities advisers and dealers. As well, individuals with net financial assets exceeding $1 million in value, or with a net income of more than $200,000 for the two previous years and prospects for similar income in the current year, can be accredited investors.

Financial Authorities Announce Appointments to New Audit Oversight Board

Gordon Thiessen, founding Chair of the Canadian Public Accountability Board (CPAB) and former Governor of the Bank of Canada, and David Brown, Chair of the Council of Governors of the CPAB as well as Chair of the OSC, announced on February 26, 2003 the names of the directors appointed to the Board of the CPAB. These appointments are for an initial term of three years.

The new directors are:
- Raymond Bachand, managing partner and CEO of SECOR (Quebec)
- Bob Bertram, Executive Vice President, Investments, Ontario Teachers Pension Plan Board (Ontario)
- Brian Canfield, Chairman, TELUS (British Columbia)
- Wendy Dobson, Director, The Institute for International Business, University of Toronto's Joseph L. Rotman School of Management (Ontario)
- Ron Gage, Former Chairman and CEO, Ernst & Young (Ontario)
- Jacques Ménard, Chairman of BMO Nesbitt Burns and President of BMO Financial Group (Quebec)

- Ted Newall, Chairman of the Board, Nova Chemicals Ltd. (Alberta)

Completing the Board of 11 directors are the senior executives of 3 provincial CA institutes:

- Gérard Caron, President, CEO and Secretary General of the Ordre des comptables agréés du Québec
- Steve Glover, Executive Director, The Institute of Chartered Accountants of Alberta
- Brian Hunt, President and CEO, The Institute of Chartered Accountants of Ontario

"I am very impressed with the quality of the individuals we have been able to attract to serve on the Board. This highlights the interest and importance attached to this initiative in Canada," said Mr. Thiessen. "The range of expertise and experience brought by the Board members will be invaluable to the CPAB."

"I am delighted with the diversity represented by our Board members, both in terms of their career backgrounds and their regional representation," said Mr. Brown. "This is a very strong team to lead the CPAB in its task of designing and implementing a rigorous system of oversight of the auditing of public companies that will contribute to public confidence in the integrity of financial reporting in Canada."

The CPAB is a new independent organization established to oversee the auditors of public companies. Its mission is to contribute to public confidence in the integrity of financial reporting of Canadian public companies by promoting high quality, independent auditing.

The Council of Governors also includes the former Chair of the Canadian Securities Administrators, Douglas Hyndman; the Chair of the Commission des valeurs mobilières du Québec, Pierre Godin; the federal Superintendent of Financial Institutions, Nicholas Le Pan; and the President and CEO of the Canadian Institute of Chartered Accountants, David Smith.

OSC Publishes Risk-based Criteria to Promote Transparency and Educate Market Participants

On December 19, 2002, the OSC published the risk-based criteria used by staff to determine whether to conduct detailed reviews of market participants and their activities. OSC staff expects that releasing this information will increase the transparency of important regulatory functions and educate market participants about how we evaluate their activities.

The risk criteria are designed to identify and target the most likely instances of non-compliance with securities laws. When an initial review indicates that a sufficient number of the criteria are met, staff will assess the situation as high risk, and proceed to review or investigate it more thoroughly.

"A risk-based approach is a means of focusing our staff's attention on the most important matters," said David Brown, Chair of the OSC. "With finite resources, we can't attempt to do everything and do it well. A selective approach allows us to apply greater scrutiny to the situations most likely to have an adverse impact on the capital markets, while reducing the regulatory burden on those market participants who pose a lower risk."

Complete descriptions of the risk review process and selection criteria are included in *OSC Staff Notice 11-719 - A Risk-based Approach for More Effective Regulation*, available on the OSC website at www.osc.gov.on.ca.

OSC Creates New Investment Funds Branch

Susan Silma has been appointed Director of the newly-created Investment Funds Branch of the OSC, Chair David Brown announced January 29, 2003.

"With her understanding of the industry, her 10 years of experience in investment funds, and her range of contacts, Susan is uniquely positioned to lead a branch that will regulate this important and growing sector of the financial industry," Mr. Brown said. "Susan will be building on the important accomplishments of OSC staff in investment funds regulation. The creation of a new branch for the regulation of investment funds underscores the importance of this sector and the challenges we expect to meet. We look forward to Susan joining our team."

Effective March 3, 2003, Ms Silma assumed leadership of a Branch of approximately 15 employees responsible for all investment funds policy and operational work at the OSC.

Ms Silma, a lawyer/MBA, previously served as General Counsel and Secretary at Working Ventures, a venture capital fund. Prior to that role, she spent 8 years in the private practice of law at a major Toronto law firm, specializing in securities and corporate law. During that time, she completed a two-year secondment at the OSC.

INTERNATIONAL REPORTS

Office of International Affairs Established

For many years, OSC staff have participated actively in a variety of international organizations that work to improve the regulation of financial services throughout the world. These organizations include the International Organization of Securities Commissions (IOSCO), the International Joint Forum of Financial Regulators and the Council of Securities Regulators of the Americas (COSRA).

In the fall of 2002, the OSC established an Office of

International Affairs, led by Susan Wolburgh-Jenah, who now holds the position of Director of International Affairs as well as General Counsel. The International Affairs Office:

- plays a strategic role in the development of the OSC's international regulatory initiatives;
- ensures that the OSC's objectives are furthered through participation in international meetings and organizations;
- supports OSC staff who participate in international organizations; and
- assists in responding to requests by foreign regulators for information about securities regulation and markets in Ontario.

One of the Office's key objectives is to provide OSC staff and stakeholders with information gained through international initiatives, thereby promoting harmonization of domestic and international standards where appropriate.

IOSCO

The International Organization of Securities Commissions (IOSCO) provides a forum for securities regulators around the world to:

- cooperate to promote high standards of regulation;
- exchange information in order to promote the development of domestic markets;
- establish standards and effective surveillance of international securities transactions; and
- promote market integrity through rigorous application of the standards and effective enforcement.

IOSCO's Technical Committee

The OSC belongs to IOSCO's Technical Committee, its key policy-making body. OSC Chair David Brown recently completed a two-year term as Chair of this committee.

OSC staff participate in standing committees and *ad hoc* task forces, and recently have been working on matters such as auditor independence, auditor oversight, the internet, securities analysts and rating agencies. At its February 2003 meeting, the Technical Committee approved for publication four papers, available on IOSCO's website (www.iosco.org).

1. ***General Principles Regarding Disclosure of Management's Discussion & Analysis of Financial Condition and Results of Operations***
   This paper specifies principles that should be considered by issuers in preparing, and by regulators in reviewing, MD&A-type disclosure.

2. ***Regulatory and Investor Protection Issues Arising from the Participation by Retail Investors in (Funds-of) Hedge Funds***
   This paper concludes that, if jurisdictions are willing to permit retail investment in (funds of) hedge funds, it is not necessary to develop new regulatory approaches that diverge significantly from the existing IOSCO principles for regulation of collective investment schemes.

3. ***Indexation: Securities Indices and Index Derivatives***
   This paper outlines the regulatory issues arising from the increased significance of indices, index-led investment strategies and index-related products.

4. ***Performance Presentation Standards For Collective Investment Schemes: Best Practice Standards***
   This consultation paper follows up on work carried out by the Technical Committee in 2002. Comments are requested by May 30, 2003, and can be submitted to:
   IOSCO – General Secretariat
   Attention: Mr. Terry Hart
   Fax: 011 34 91 555 93 68
   email: sofia@oicv.iosco.org

International Joint Forum

The International Joint Forum was established in 1996 by the Basel Committee on Banking Supervision, IOSCO and the International Association of Insurance Supervisors. The OSC and the federal Office of the Superintendent of Financial Institutions (OSFI) participate in the International Joint Forum, together with regulators from twelve other countries. Janet Holmes, Senior Legal Counsel in the International Affairs Office, represents the OSC at meetings of the Joint Forum.

The International Joint Forum's mandate is to study issues of common interest to the three financial sectors and develop guidance or best practices, as appropriate. The International Joint Forum currently has two working groups that are pursuing mandates relating to the supervision of financial services firms:

- One working group is following up on recommendations published by the Joint Forum in April 2001 concerning enhanced public disclosure by regulated firms of their exposure to risk.
- A second working group is pursuing mandates relating to trends in risk aggregation and integration and transfers of operational risk across financial sectors.

Papers published by the International Joint Forum are included in the "Public Documents" section of IOSCO's website. (The April 2001 report referred to above is Document 116.)

COSRA

The Council of Securities Regulators of the Americas (COSRA) was established in 1992 as a forum for securities regulators in North, South and Central America, as well as the Caribbean. It has 31 members in 26 countries. The Chairmanship of COSRA currently is held by the Commission des valeurs mobilières du Québec.

COSRA recently published the following studies and reports:

- ***Delivery versus Payment and Settlement Assurance Procedures in Securities Settlement Systems in the Americas (2002)***; and
- a collection of members' responses to a COSRA questionnaire on corporate governance (2002).

COSRA currently is pursuing mandates relating to small business development and capital formation and clearance and settlement. In connection with COSRA's clearance and settlement project, OSC Vice-Chair Howard Wetston led a seminar for industry and regulators at COSRA's March 2003 meeting in Florida. COSRA public documents can be accessed on-line through the website of the Securities and Exchange Commission of Brazil at www.cvm.gov.br.

For more information about these and other international initiatives, please contact **Susan Wolburgh-Jenah**, General Counsel and Director, International Affairs, (416) 593-8245, swolburghjenah@osc.gov.on.ca, or **Janet Holmes**, Senior Legal Counsel, International Affairs, (416) 593-8282, jholmes@osc.gov.on.ca.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The Canadian Securities Administrators (CSA) is the national organization representing the 13 provincial and territorial securities commissions.

National Registration Database Launched

On March 31, Canada's securities regulators launched a registration system designed to harmonize and improve the registration process. The National Registration Database (NRD) is a web-based system that permits dealers and advisers to file most registration forms electronically. Previously, all forms were paper-based, and their content varied by province.

NRD is an initiative of the CSA and the Investment Dealers Association of Canada (IDA), in which every jurisdiction in Canada except Quebec is participating. More than 1,500 firms and 100,000 individuals were included in the system at its launch date.

Regulators have established a website dedicated to providing NRD-related information, at www.nrd-info.ca.

Stephen Sibold Named New Chair of Canadian Securities Administrators

On April 3, 2003, Alberta Securities Commission Chair Stephen Sibold was named the new Chair of the Canadian Securities Administrators, the national umbrella group representing Canada's securities regulators. Sibold succeeds Douglas Hyndman, the British Columbia Securities Commission Chair who served as head of the CSA for eight years. Donne Smith, Administrator of the New Brunswick Securities Administration Branch, was named Vice-Chair.

"Doug Hyndman has done a tremendous job during his tenure as CSA Chair," Sibold said. "As I step into this role, I am, among other things, focused on continuing the development of uniform legislation for the CSA, and on improving the effectiveness of the CSA."

Sibold's and Smith's appointments were confirmed at a meeting of the Chairs of the 13 provincial and territorial regulators in Toronto on April 3. Both positions have two-year terms.

Guidelines for Capital Accumulation Plans

On April 25, 2003, the Joint Forum of Financial Market Regulators released proposed Guidelines for Capital Accumulation Plans (CAPs) for public comment.

The proposed guidelines describe the rights and responsibilities of CAP sponsors, service providers and CAP members; outline the information and assistance that should be available to CAP members when making investment decisions; and ensure that regardless of the regulatory regime, there is similar regulatory results for all CAP products and services.

CAPs include all employer-sponsored savings plans in which employees are empowered to decide how their savings are invested. They include many defined contribution pension plans as well as, for example, group RRSPs, employer stock purchase plans, and profit sharing plans.

"Once we finalize these guidelines, they will help us provide a similar level of regulatory protection for all investors making similar types of investment decisions," said David Wild, Chair of the Joint Forum. "We have also developed a discussion document that outlines an implementation strategy framework. We encourage comments from plan sponsors, service providers and plan members to help us identify their implementation issues and let us know whether the guidelines will work for them."

The deadline for submissions is August 31, 2003. Copies of the proposed guidelines can be viewed at www.capsa-acor.org or www.ccir-ccrra.org and on many CSA member websites.

The Joint Forum of Financial Market Regulators was founded in 1999 by the Canadian Council of Insurance Regulators (CCIR), the Canadian Association of Pension Supervisory Authorities (CAPSA) and the Canadian Securities Administrators (CSA) and also includes representation from the Canadian Insurance Services Regulatory Organization (CISRO) and the Bureau des services financiers in Quebec.

On-Line Insider Reporting System To Speed Reports, Add Transparency

The System for Electronic Disclosure by Insiders (SEDI) will improve public access and add transparency to insider trade reporting by making information about these insider trades available to investors electronically for all jurisdictions in Canada. SEDI will first bring issuers on-line starting May 5, 2003, then bring insiders on-line starting June 9, 2003. As of June 9, insider trade reports to all Canadian securities jurisdictions will be made via SEDI, eliminating paper-based reporting systems for virtually all insider trades.

By filing through SEDI, an insider will satisfy the securities legislation of all CSA jurisdictions that have insider reporting requirements. Filing deadlines are harmonized in all jurisdictions, generally requiring all insiders to report trades within 10 days of the transaction.

SEDI will introduce the following significant changes to the current system.

Investors

Investors will be able to get insider reports 24 hours a day, seven days a week, at no charge. Investors will be able to access reports such as:

- a weekly summary that displays all transactions filed in SEDI in the preceding week;
- the details of individual transactions by insiders;
- a list of insiders who have registered for each SEDI issuer and the closing balance of all that issuer's securities they hold; and
- an "issuer event history", which includes a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event reported on SEDI.

Insiders

SEDI will provide a higher level of convenience for insiders, who need file only one report to comply with all provincial regulations, and can file 24 hours a day, seven days a week, subject to maintenance requirements. Insiders will not be required to pay any filing fees.

Starting with reports due on or after June 9, 2003, all insiders of "SEDI issuers" will be required to file their insider reports on SEDI. The National Instrument defines SEDI issuers to mean reporting issuers, other than mutual funds, that file disclosure documents in electronic format through SEDAR - essentially all Canadian public companies. The information required to be filed electronically is substantially the same as the information currently filed on paper reports.

Public Companies

SEDI issuers will be required to register and provide information related to their outstanding securities in the period between May 5 and May 30, 2003. All SEDI issuers should ensure that they have filed or updated their SEDAR profile, and must file an accurate and complete SEDI issuer profile supplement on or before May 30, 2003. Any firm that becomes a reporting issuer on or after May 30, 2003 will have three business days to file its SEDI issuer profile supplement.

SEDI issuers will have a new obligation to file a report in SEDI one day after the occurrence of an "issuer event," which includes a stock dividend, stock split, consolidation, amalgamation, reorganization, merger or other similar event; this information will be used by insiders to update information about their insider holdings. Reporting issuers that are required to file through SEDAR are being notified of changes to SEDAR's annual filing service charges for the implementation of SEDI.

The filing requirements are listed in National Instrument 55-102 *The System for Electronic Disclosure by Insiders (SEDI)* and in the Canadian Securities Administrators' Staff Notice 55-309 *Launch of the System for Electronic Disclosure by Insiders (SEDI) and Other Insider Reporting Matters*. These documents are available at www.osc.gov.on.ca.

Securities Regulators Review Public Company MD&A

Canadian securities regulators are reviewing how well publicly-traded companies comply with their management discussion and analysis (MD&A) disclosure requirements. The CSA announced March 5, 2003, that its review will identify areas where disclosure is deficient or could be improved.

MD&A disclosure rules require that management discuss the dynamics of the business and analyze the financial statements. Coupled with the financial statements, this information should enable readers to fully assess the issuer's performance, position and future prospects.

"Investors are entitled to a clear, transparent discussion and analysis that guides them through the numbers," said Doug Hyndman, former Chair of the CSA. "The MD&A should give a reader the ability to see the issuer through the eyes of management. It should provide both a historical and a prospective analysis of the issuer's business."

As part of the reviews, regulators will contact companies to discuss disclosure that falls short of the standards and, for serious deficiencies in compliance, could request that documents be refiled. Following the completion of the reviews, the CSA will publish a notice documenting major deficiencies.

Regulators: Insiders Required to Report Equity Monetizations

Canadian securities regulators have published for comment a proposed instrument which will clarify that insiders

must file insider reports for derivative-based transactions, including equity monetization transactions. If adopted, the proposed instrument will ensure that insider transactions involving derivatives which have a similar effect in economic terms to insider trading activities are fully transparent to the market.

"We are acting jointly with regulators in other Canadian jurisdictions to ensure that insider activities involving derivative-based transactions are subject to insider reporting requirements," said Paul Moore, Vice-Chair of the OSC.

The proposed instrument does not prohibit insiders from entering into monetization transactions. It does, however, require that insiders disclose the existence and material terms of such transactions to the public. In this way, the public can determine the significance, if any, of such transactions. If unreported, these transactions shield from public view changes in insiders' true economic positions in their issuers.

The proposed instrument will also require, in certain circumstances, that insiders disclose the existence of monetization arrangements that were entered into before the instrument comes into effect. The instrument will apply to those pre-existing monetization arrangements which continue in force after the effective date of the instrument and which continue to have an impact on an insider's publicly reported holdings.

Comments on *Multilateral Instrument 55-103 (Insider Reporting for Certain Derivative Transactions)*, available on the OSC web site (www.osc.gov.on.ca), are requested by May 31, 2003 by the OSC and other Canadian jurisdictions except British Columbia.

Regulators Propose New Disclosure System for Segregated Funds and Mutual Funds

The Joint Forum of Financial Market Regulators released a consultation paper February 13, 2003 proposing changes to the way information is communicated to consumers of segregated funds and mutual funds about their investment choices. The consultation paper, *Rethinking Point of Sale Disclosure for Segregated Funds and Mutual Funds*, is the latest Joint Forum initiative directed towards improving and harmonizing financial services regulation across different sectors and jurisdictions.

The regulators propose taking a common sense approach to point of sale disclosure that recognizes advances in technology, and research around consumer needs and behavior. The proposed disclosure regime creates an integrated disclosure system tailored for segregated funds and mutual funds that relies on an access-equals-delivery approach.

The most important information about a fund will be available to consumers in the form of a one or two-page *fund summary document* that sales representatives will use during the sales process *before* a decision is made. Consumers will be told how they can get other information about their fund, including a *foundation document* and the *continuous disclosure record*. These documents, along with a *consumers' guide*, will be available to consumers electronically — and in paper — at all times. The foundation document will define a particular fund by including information about the fund's objectives, strategies and management. The continuous disclosure record will consist of annual and semi-annual financial statements of the fund, as well as periodic discussions of fund performance by management.

The new regime will ultimately mean more and better information for consumers upon which to base their investment decisions. The system takes a layered approach to disclosure and gives each consumer the option to choose how much information he or she needs.

Copies of the consultation paper can be obtained by contacting Stephen Paglia, Senior Policy Analyst, Joint Forum Project Office [phone: (416) 590-7054, e-mail: spaglia@fsco.gov.on.ca]. Alternatively, copies can be obtained online at regulators' websites (e.g. www.osc.gov.on.ca, www.fsco.gov.on.ca).

The Joint Forum was founded in 1999 by the Canadian Council of Insurance Regulators (CCIR), the Canadian Securities Administrators (CSA), and the Canadian Association of Pension Supervisory Authorities (CAPSA), and also includes representation from the Canadian Insurance Services Regulatory Organizations (CISRO) and the Bureau des services financiers in Quebec.

CSA Proposes Blueprint for Uniform Securities Law In Canada

On January 30, 2003, the CSA published a concept proposal for uniform securities laws (USL) in Canada. The proposal envisions a "platform" Uniform Act that would set out fundamental rights, powers and obligations, and Uniform Rules that would set out detailed requirements.

"We're harmonizing the Canadian system of securities regulation within a flexible framework that is able to adapt quickly to evolving market requirements," said Stephen Sibold, Chair of the CSA, Chair of the Alberta Securities Commission, and Chair of the USL Steering Committee.

The proposed framework also incorporates simplified and streamlined regulation in those areas that could be accommodated within the project timeframe. The proposal would streamline inter-jurisdictional registration of firms and individuals, and allow securities regulators to delegate decision-making across all regulatory functions to another securities regulator.

The *CSA Blueprint for a Uniform Securities Act for Canada* is available at the OSC website (www.osc.gov.on.ca).

Canada's Securities Regulators Publish Revised Oil and Gas Disclosure Standards

On January 24, 2003, the CSA released a revised proposal for oil and gas disclosure standards. The disclosure standards are set out in proposed *National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities*. They incorporate reserves evaluation standards and terminology set out in the new industry-developed Canadian Oil and Gas Evaluation Handbook.

The proposal reflects the CSA's emphasis on continuous disclosure of important company information to investors and capital markets. Public oil and gas companies would engage independent reserves evaluators or auditors to report on their oil and gas reserves and related future net revenue estimates. A summary of that report, and other information concerning oil and gas reserves, properties and activities, would be publicly filed each year.

The proposal can be found on several securities commission websites, including www.osc.gov.on.ca. CSA staff plan to have the new standards in place this year. Companies with fiscal years ending on or after December 31, 2003 would report using the new disclosure standards in 2004.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission.

M.C.J.C. Holdings Inc. and Michael Cowpland Hearing Set for May 20, 2003

The OSC scheduled hearings in the matter of M.C.J.C. Holdings Inc. and Michael Cowpland between May 20, 2003 and June 20, 2003. M.C.J.C. is alleged to have committed insider trading. Cowpland is alleged to have authorized as a director the insider trading of M.C.J.C. and misled staff of the Commission.

OSC Approves the Settlement Between Staff and Ronald Mock

On April 9, 2003, a panel of the Commission approved the settlement reached between Staff of the Commission and the respondent Ronald Mock.

Mock was the CEO and President of Phoenix Research and Trading Corporation (Phoenix Canada). During the material time, he was registered with the Commission as an investment counsel and portfolio manager pursuant to the Securities Act. He also was the company's supervisory procedures officer under the Act.

The Commission terminated Mock's registrations and banned him from becoming an officer or director for six years. Pursuant to the settlement, Mock undertook not to apply for registration for five years and not to supervise any registrant for six years. He will write and pass the Partners, Directors and Officers examination and be subject to one year of supervision if he ever becomes registered. The Commission reprimanded Mock and ordered him to pay investigation costs in the amount of $45,000.

Copies of the Commission Order and Settlement Agreement between Staff and Mock are available on the Commission's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, Toronto.

Reasons for Decision in Lydia Diamond, Jurgen von Anhalt, Emilia von Anhalt

The OSC, through its independent tribunal, issued on March 20, 2003 its Reasons in the matter of Lydia Diamond Exploration of Canada Ltd., Jurgen von Anhalt and Emilia von Anhalt. The Commission had earlier ordered that the von Anhalts, subject to certain specific exceptions, cease trading in securities for 12 years, resign all positions held as directors or officers of any issuer, be prohibited from becoming or acting as an officer or director of any issuer for 15 years and be reprimanded. The von Anhalts were also ordered to pay costs of $100,000 each.

The Commission ordered that Lydia cease trading in securities, for three years except as specifically permitted, and be reprimanded. Lydia was also ordered to pay costs of $25,000.

The Commission was satisfied "on clear and cogent facts" that "based on the von Anhalts' conduct in the past, it was likely they would continue to behave in character in the future, with little regard for good business practices and the requirements of securities law."

The Commission found that Lydia was "tainted by the conduct of the von Anhalts" and crafted an order "designed to strike a balance between the interests of the Respondents and the interest of the public."

In the matter of Universal Settlements Inc.

On March 20, 2003, the Ontario Superior Court of Justice (Divisional Court) stayed an order of the Ontario Securities Commission, pending a judicial review application. On January 31, 2003, the Commission had dismissed in its entirety an application brought by USI to revoke an investigation order under section 11 of the Ontario Securities Act and to quash a summons issued pursuant to section 13 of the Act. The judicial review application will be heard by the Court on May 22, 2003.

OSC Approves Settlement Between Staff and Phoenix Research and Trading Corporation

On March 13, 2003, a panel of the Commission approved a settlement reached by Staff of the Commission and the respondent Phoenix Research and Trading Corporation.

Phoenix was registered with the Commission as an investment counsel and portfolio manager pursuant to the *Securities Act*. It was also registered pursuant to the *Commodity Futures Act* as an adviser in the category of commodity trading manager.

Phoenix's fixed income arbitrage activities included the Phoenix Fixed Income Arbitrage Limited Partnership (PFIA LP), a hedge fund. PFIA LP collapsed in early January 2000 when a $3.3 billion U.S. long position in U.S. 6% treasury notes due August 15, 2009 (the UST Notes) caused a significant overdraft position at the Bank of New York. PFIA LP was forced to liquidate its assets. The resulting loss to PFIA LP exceeded US$125 million.

The Commission terminated Phoenix's registrations under the *Securities Act* and the *Commodity Futures Act*. The Commission reprimanded the company and ordered that it pay $50,000 in investigation costs.

Copies of the Commission's Order and Settlement Agreement are available on the Commission's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, Toronto.

OSC Executive Director Approves Settlement with Corporate Directors Over Repeated Late Filings of Financial Statements

On February 28, 2003, Charles Macfarlane, Executive Director, Ontario Securities Commission, approved a settlement agreement reached between Staff of the Commission, Angelo Panza and Camille Ayoub for Panza's and Ayoub's roles in a company's repeated late filings of interim and annual financial statements. Panza and Ayoub were both directors of the Farini Companies Inc., a reporting issuer in Ontario. In addition to serving as directors of Farini, Panza was the company's President, and Ayoub held the office of Secretary.

In the settlement agreement, Panza and Ayoub agree that, in the period between 1995 and the present, Farini failed on 11 occasions to file its interim financial statements within the time period required by the Securities Act. They also agree that Farini failed to file its annual financial statements within the required time period on eight occasions.

As officers and directors of Farini, Panza and Ayoub agree that they "authorized, permitted or acquiesced" in these failures. As a result, Panza and Ayoub have undertaken to resign all positions that they currently hold as officer or director of any issuer, and undertake not to assume any such positions for a period of two years.

"Investors expect that companies will comply with their basic requirements, such as meeting filing deadlines," said John Hughes, Manager of the Commission's Continuous Disclosure team. "This decision reflects our willingness to hold individual directors and officers responsible for failures in this area. It further underscores our view of the importance of prompt corporate filings, even by small companies."

The full text of the settlement agreement is available in the Enforcement section of the OSC's website, www.osc.gov.on.ca, or from the Commission offices at 20 Queen Street West, Toronto.

OSC and the CVMQ Settlement Agreements with CIBC World Markets Inc.

The OSC has approved a settlement agreement reached between Staff of the OSC and CIBC World Markets Inc. The Commission des valeurs mobilières du Québec (CVMQ) also approved a separate settlement agreement reached between Staff of the CVMQ and CIBC World Markets. The agreements were considered February 27, 2003 at a joint hearing of the Commissions.

By way of sanction, CIBC World Markets agreed and the OSC ordered that CIBC World Markets submit to a review of its conflict disclosure practices by an independent expert. The results of this review will be provided to CIBC World Markets and to the OSC, and the OSC may make further orders requiring compliance with the expert's recommendations.

The OSC reprimanded CIBC World Markets for its conduct, and required it to make a payment of $100,000 towards the costs of the joint investigation of the matter. In approving the settlement agreement, and after reviewing the research reports in question, Commissioner Theresa McLeod stressed the importance of making required disclosure in a type size that is large enough to be easily read by investors, and of separating and highlighting key disclosures, rather than "bury[ing] them in the middle of dense paragraphs" of boilerplate text.

Copies of the Notice of Hearing issued by the OSC, the Statement of Allegations filed by OSC Staff, the Settlement Agreement and the Order made are available at www.osc.gov.on.ca.

Costello Contravened Securities Act

In a decision issued February 18, 2003, the OSC found that Brian Costello's failure to become registered as an adviser contravened section 25(1)(c) of the Ontario Securities Act.

"His failure to make full, complete and conspicuous disclosure of his many conflicts of interest was contrary to the public interest," the three-member panel of the Commission said in its decision.

The panel has requested submissions from counsel for Mr. Costello and OSC Staff on what sanctions, if any, should be made in the public interest. Argument on sanctions was scheduled to be heard March 31, 2003.

Mark Edward Valentine Cease Trade Order Extended

The OSC extended its temporary cease trade order against Mark Edward Valentine on February 17, 2003. The new order suspends Mark Valentine's registration and prohibits him from trading in securities, with certain exceptions, until at least July 31, 2003.

In reasons for decision released with the order, the Commission ruled that Mr. Valentine breached the previous cease trade order by trading in futures contracts in July of 2002. Copies of the Commission's order and reasons for decision, as well as the Notice of Hearing and Statement of Allegations are available on the Commission's website.

OSC Proceedings in ATI Technologies, K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Allan Rae and Sally Daub

The OSC announced January 16, 2003 that it has commenced proceedings against ATI Technologies Inc., K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Alan Rae and Sally Daub.

ATI is alleged to have failed to disclose material information on a timely basis and to have made a misleading statement to Staff.

K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, and Alan Rae are alleged to have committed insider trading contrary to Ontario securities law, resulting in more than $7.9 million in profits or avoided losses and triggering significant tax benefits. Staff of the OSC have given notice of the intent to seek disgorgement of any amounts attained as a result of non-compliance with Ontario's securities law. In addition, Sally Daub is alleged to have made a misleading statement to staff.

The first appearance, initially scheduled for February 14, 2003, was adjourned to a date to be agreed to by counsel. Copies of the Notice of Hearing and Statement of Allegations are available at www.osc.gov.on.ca or from the Commission, 19th Floor, 20 Queen Street West, Toronto, Ontario.

RECENT SPEECH

Excerpts from a keynote address by David A. Brown, Chair, Ontario Securities Commission to the Law Society of Upper Canada (Toronto, March 19, 2003)

There is little doubt that the crisis in confidence that has roiled U.S. markets in the wake of Enron, WorldCom, Global Crossing and other failures has spilled across the border into Canada. U.S. governmental and regulatory authorities have taken swift measures to correct the systemic failures exposed by these scandals. But we have essentially the same market system here in Canada, and we've had our own share of failures.

What is to be Canada's response?

I believe that the measures introduced in Bill 198 will greatly assist us in restoring investor confidence in our capital markets.

I congratulate Finance Minister Janet Ecker for showing leadership and introducing this legislation. I should also acknowledge the work done by Purdy Crawford and the Five Year Review Committee, which is wrapping up its work and will soon submit its final report to the Minister. As you know, the amendments to the Securities Act introduced in Bill 198 were drawn largely from the work of the Five Year Review Committee. Consequently, all of these measures have benefitted from a great deal of consultation and careful consideration.

I want to speak to you today more specifically about the role that increased regulatory sanctions and criminal penalties play in restoring investor confidence…I hope that my remarks will help to put into context some of our thinking as we move forward in this important area.

New Violations

New violations in the Act include: securities fraud, market manipulation and making a misleading or untrue statement. Incredibly, these activities are not specifically prohibited in the Ontario Act. Market manipulation is an offense under the B.C., Alberta and Saskatchewan statutes and is a securities law offense both in the U.S. and the U.K. The B.C. and Alberta Acts also specifically prohibit fraud. Although we have the authority to deal with this activity under our broad public interest jurisdiction, it is so fundamental that it should be enshrined in the Act.

Administrative Sanctions

Bill 198 gives the Commission itself two new administrative sanctions: the authority to levy an administrative penalty of up to $1 million; and the ability to order disgorgement of profits made as the result of a violation of Ontario securities law. These will be added to the arsenal of sanctions that can be imposed in a section 127 proceeding. Much has been said about the extent of our powers under this section. Justice Laskin made it clear in the Asbestos decision that the purpose of our public interest jurisdiction is neither remedial nor punitive - it is protective and preventative - intended to prevent likely future harm to Ontario's capital markets. In upholding Justice Laskin's decision, Justice Iacobucci noted that it is important to recognize that section 127 is a regulatory provision and that the objective of regulatory legislation is the protection of societal interests, not the punishment of an individual's moral faults. He stated:

"... the purpose of an order under s.127 is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets."

Some practitioners have expressed a concern that the power to impose a fine crosses the line from preventative to punitive - thereby rendering it unconstitutional. I disagree. To put it in Justice Iacobucci's terms, the issue will turn on whether the administrative penalty is seen as punishment for the individual's moral faults or whether it can be seen as a sanction imposed to restrain future conduct. Properly applied, I believe the power will be construed to be preventative.

The authority to order disgorgement is a first for a Canadian securities regulator. The principle behind it is compelling: why should a person or company be allowed to keep monies that were made as a result of a breach of the Securities Act? This is a progressive step that puts us on a par with the U.S. But the devil is in the details.

How will disgorgement work in practice? How will the amount of profit be determined? What guidelines will be in place to decide who gets what? Candidly, we still have a great deal of work to determine how best to implement this measure. The SEC has enacted rules of practice governing their determination of entitlements to disgorged monies which we are examining for ideas. We will also work closely with you, with other market participants and with Ministry officials to provide as much clarity as possible.

New Penalties for the Courts

The Securities Act does permit the courts to assess remedial or punitive penalties, notwithstanding the limitations discussed above on the Commission's direct powers of sanction. As Justice Iacobucci put it in the Asbestos appeal, "The

enforcement techniques in the Act span a broad spectrum from purely regulatory or administrative sanctions to serious criminal penalties."

Here, punishment and deterrence are legitimate objectives. The Five Year Review Committee found that the general penalty provisions of the Act hadn't been changed for 15 years. It also found that potential prison terms in other jurisdictions were much longer that ours - ranging from three years to 10 years. The Committee concluded that the maximum fine under the general penalty provision should be sufficiently large to be viewed as more than simply a licensing fee. Thus, the Committee recommended increases in both the fines and jail terms that can be levied by a court.

Under Bill 198, the maximum court-imposed fine rises from $1 million to $5 million, while the maximum jail term increases from two years to five years less a day. For insider trading cases, the court continues to be allowed to impose a fine of up to three times the profit made or loss avoided.

With Bill 198, the Legislature has sent a strong signal to the courts that stiffer sentences are needed for violations of the Securities Act. This signal from our lawmakers is needed. Courts still view a proceeding under the Securities Act as an administrative proceeding, notwithstanding the provision of criminal penalties. As a result, even for the most egregious conduct, penalties are often set at or below the mid-point in the specified range. If the courts respond positively to this signal from our legislators, we should have a very clear deterrent message to potential miscreants.

Federal Finance Minister John Manley announced in his recent budget that increased federal resources will be made available to combat criminal activity in our capital markets. There are two components to this funding. The first is for investigations. New funding will be earmarked for the RCMP to hire and train sophisticated investigators with the knowledge to identify and investigate complex securities fraud. Among other things, this funding will allow us to expand our existing successful partnership with the RCMP. The second element is to increase resources for criminal prosecutions. The federal government has not yet announced how much more aggressive it is prepared to be in taking securities-related cases to court. But even with a greater commitment, it will take some time for the feds to ramp up their resources.

Although these new signs are positive, it will take some time before some fundamental questions are answered. For example: Is there a greater desire among municipal, provincial and federal police to make securities-related crime a higher investigative priority? If so, is there a will at the provincial and federal level to prosecute these cases? Is there a role for OSC litigators to play in prosecuting criminal code cases?

These are all questions that we will be wrestling with during the coming months, and I look forward to hearing your views on these matters.

(Streamlined and Reduced OSC Fees, continued from page 1)

"Ontario Finance Minister Janet Ecker has approved our new fee proposal, which will bring us to a total reduction of up to 40 per cent," he said. "These combined fee reductions will result in the industry saving in excess of $40 million per year in fees payable to the OSC."

"All market participants have benefited from reduced fees during the past three years," said Macfarlane. "The element we are adding to the reductions now is a reformed fee schedule that fairly allocates costs based on services used." To accomplish this objective, the new schedule incorporates two types of fees:

1. Participation Fees reflect the benefit derived by market participants from taking part in Ontario's capital markets. All market participants, including reporting issuers, registrants and mutual fund managers, will be required to pay an annual participation fee. The participation fees are based on a measure of the size of the market participant, which is intended to serve as a proxy for the market participant's use of the capital markets.

2. Activity Fees reflect the direct cost for activities provided by OSC staff at the request of the market participant. Examples include processing registration documents, or reviewing prospectuses and applications for discretionary relief.

The OSC is commited to re-evaluating the fee schedule every three years, Macfarlane said. "We expect to operate within budget, but if there is a surplus after three years, fees will be reduced accordingly for the next three-year period."

The new fee model was developed with extensive industry cooperation, including focus groups with reporting issuers, dealers, advisers, mutual fund managers, the Investment Dealers Association of Canada and the Investment Funds Institute of Canada.

Perspectives is published quarterly by the Communications Branch of the Ontario Securities Commission.

To be included on the mailing list for *Perspectives*, please contact us at:

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The OSC Website, www.osc.gov.on.ca includes:
Information on the OSC, Investor Information, Rules and Regulations, Enforcement Information and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

olume 6, Issue 3

SUMMER 2003

inside...

FEATURE

OSC Issues Investor Confidence Rules

As part of its campaign to restore investor confidence in our capital markets, the Ontario Securities Commission issued three proposed rules for comment on June 27, 2003. The proposed rules are the latest in a series of initiatives designed to reassure investors in the wake of U.S. financial reporting scandals.

"The rules are as robust as parallel rules required by the U.S. Sarbanes-Oxley legislation, but address unique Canadian concerns," said David Brown, OSC Chair. "They are made in Canada and right for the Canadian market. They include accommodations for smaller issuers, closely-held companies and issuers that are listed on an American exchange. And most importantly, the rules have near-unanimous national backing, with 12 of our 13 provincial and territorial securities regulators joining in support."

(continued on page 10)

INDEX

Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets.

Three New Commissioners Appointed to Ontario Securities Commission

The Ontario Securities Commission announced on June 25, 2003 the appointment of three new Commissioners, bringing the Commission to a total of 14 members. The new members, each appointed by Order in Council for three-year terms, are Wendell S. Wigle, appointed on May 28, 2003, as well as Paul Kevin Bates and Suresh Thakrar, both appointed on June 11.

"I am very impressed with the qualifications that our new Commissioners bring to the OSC," said David Brown, OSC Chair. "It is vital, as we rebuild investor confidence in our capital market, that our Commissioners bring broad knowledge of how the securities industry works, in all of its aspects and functions. As well, I am pleased that our new members will increase our ability to hear matters brought before the Commission in a timely manner."

The OSC Commissioners form the Board of Directors for the Commission, overseeing the management of the financial affairs of the Commission and setting policy under the *Ontario Securities Act* and the *Ontario Commodity Futures Act*. As well, commissioners sit as members of independent panels assembled to hear matters and impose sanctions as permitted by the Acts.

Biographical Information

Paul K. Bates

Former CEO of Charles Schwab Canada, Mr. Bates serves on boards in both the for-profit and not-for-profit sectors, is a management consultant and is a faculty member at the University of Toronto's Joseph L. Rotman School of Management. His appointment expires on June 10, 2006.

Suresh Thakrar, FICB

A former Vice-President of RBC Financial Group, where he has over the past 30 years held a number of senior positions across various areas of the Bank. Mr. Thakrar is currently on a sabbatical and engaged in a number of philanthropic activities in Canada and abroad. His appointment expires on June 10, 2006.

Wendell S. Wigle, Q.C.

A member of the Ontario Bar since 1957, appointed Queen's Counsel in 1972, certified as a Specialist (Civil Litigation) by the Law Society of Upper Canada in 1988, President of the Advocates' Society (1977-78) and the Medico-Legal Society of Toronto (1984-85), Mr. Wigle is senior litigation counsel at Hughes, Amys. His appointment expires on May 27, 2006.

New Interactive Centre Quizzes Launched by investorED.ca

How do you handle risk? Does your investment behaviour make you a target for scams? How much do you know about investing? InvestorED.ca's Interactive Centre now offers a series of new quizzes which can enhance your investment know-how and help you protect yourself from investment fraud.

Three new risk quizzes help you gauge your tolerance for risk and understand how much risk you are willing to take to reach your investment goals. These quizzes join the popular Mutual Fund Fee Impact Calculator and interactive tools from the Canadian Securities Administrators on investorED.ca's Interactive Centre.

Established by the Ontario Securities Commission in 2000, the Investor e.ducation Fund is dedicated to providing investors with easy-to-use, relevant and trusted financial information. Launched in early February, our website www.investorED.ca gathers resources from the most objective sources of investment information in Canada - securities regulators.

For more information about the Investor e.ducation Fund visit the About Us section of *www.investorED.ca*.

Final Five Year Report on Securities Law Review Released

On May 29, 2003, the Ontario government announced the release of the Five Year Review Committee Final Report - Reviewing the Securities Act (Ontario). The committee, which examined securities legislation in Ontario and the Ontario Securities Commission, was chaired by Mr. Purdy Crawford, Q.C.

"I am very pleased with the committee's work," said Ontario Finance Minister Janet Ecker. "Up-to-date securities laws play a critical role in making sure we have fair and efficient capital markets. The committee also advocates moving toward national securities regulation, a position that the government of Ontario strongly supports."

The government has already acted to improve securities

legislation in the province based on recommendations contained in the committee's interim report. The final report supports each of the steps that have been taken:

- Increased court fines and prison terms for general offences;
- New powers for the OSC to impose fines for securities violations and to order offenders to disgorge their ill-gotten gains;
- New rule-making powers for the OSC to make corporate executives accountable for the financial statements and internal controls of their companies and to ensure that audit committees of public companies play an appropriate role in ensuring the integrity of those financial statements;
- Proposals in this spring's Budget legislation, *The Right Choices Act*, which would allow broader rights for secondary market investors to sue companies that make misleading or untrue statements or fail to give full and timely information; and
- A Memorandum of Understanding between the OSC and the Ministry of Finance has been executed as suggested in the committee's final report.

"I want to thank the committee for its hard work in reviewing Ontario's securities legislation," said Minister Ecker. "Their recommendations will help us move forward in our continuing efforts to protect Ontario investors and protect the integrity of our markets. Feedback on the final report will be important in terms of developing draft legislation for further consultation."

Ontario's *Securities Act*, as amended in 1994 and effective in 1995, requires that an advisory committee be appointed to review Ontario's securities laws every five years. This is the first five-year review.

The Five Year Review Committee Final Report is available on the Ministry of Finance website at *www.gov.on.ca/FIN/english/enghome.html* or on the Ontario Securities Commission website at *www.osc.gov.on.ca/en/regulation.html*.

Memorandum of Understanding Between the Minister of Finance and the OSC

Under Subsection 3.7(1) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended, the Commission and the Minister of Finance are required to enter into a Memorandum of Understanding (MOU) every five years. The MOU must set out:

- the respective roles and responsibilities of the Minister and the Chair;
- the accountability relationship between the Commission and the Minister;
- the responsibility of the Commission to provide to the Minister business plans, operational budgets and plans for proposed significant changes in the operations or activities of the Commission; and
- any other matter that the Minister may require.

The MOU between the Commission and the Minister dated May 26, 2003 became effective immediately. The MOU is on the OSC website under Rules and Regulations, Rulemaking and Notices, Notices, Memoranda of Understanding.

Questions may be referred to **Susan Wolburgh Jenah**, General Counsel and Director, International Affairs, (416) 593-8245, email: *swolburghjenah@osc.gov.on.ca*, or **Krista Martin Gorelle**, Senior Legal Counsel, General Counsel's Office, (416) 593-3689, email: *kgorelle@osc.gov.on.ca*.

Margo Paul Appointed Director, Corporate Finance Branch

Margo Paul has been appointed Director of the Corporate Finance Branch of the Ontario Securities Commission, Executive Director Charles Macfarlane announced on May 6, 2003.

"Margo has risen through the ranks of the OSC in her near ten-year career with us," Mr. Macfarlane said. "Quite fittingly, she will now lead the branch which she initially joined, and where she served in various functions for most of her OSC career. Margo has been in the Director role on an acting basis for quite some time now. She has certainly demonstrated her ability to manage the branch during a period in which staff were called upon to meet the challenges of a very heavy policy development agenda."

Prior to joining the Commission in 1994, Ms Paul practised corporate and securities law. She received a business degree and a law degree from the University of Western Ontario and a Masters degree in law from Dalhousie University. She was called to the Ontario bar in 1988.

"I extend a great degree of credit for Corporate Finance's success in the last year to the branch's very strong management team and highly-specialized staff," said Ms Paul. "Given the tasks that the commission will set for itself in the coming year, I know I will continue to count on our staff's dedication to meet the upcoming challenges as we build on the OSC's investor confidence initiatives."

The Corporate Finance Branch is comprised of 80 staff, half of whom are members of the law or accounting professions, with the balance made up of administrators. Responsible for the regulation of public companies, the branch oversees offerings, continuous disclosure filings, take-over bids, as well as mergers and acquisitions.

National Registration Database Filing Deadlines Extended

Registrants have indicated to staff that in some cases the quality of the data converted from the Commission's internal registration system to the National Registration Database (NRD) is poor. Staff very much regrets this and is attempting to relieve the burden this has placed on registrants in two ways.

First, staff has extended some of the deadlines in the transition sections of the NRD and Registration Information rules. Specifically, staff will not take any action against firms or individuals that make NRD submissions under the following sections after the time required in the sections so long as the filing is made on or before September 30, 2003:
(a) section 7.4, section 7.6, and paragraph 7.9(1)(a) of Multilateral Instrument 31-102;
(b) section 7.4, section 7.6, and paragraph 7.9(1)(a) of OSC Rule 31-509 (*Commodity Futures Act*);
(c) paragraph 8.2(a), paragraph 8.2(c), section 8.3, and section 8.4 of Multilateral Instrument 33-109; and
(d) paragraph 8.2(a), paragraph 8.2(c), section 8.3, and section 8.4 of OSC Rule 33-506 (*Commodity Futures Act*).

Second, staff is investigating whether registration categories and officer titles that have been loaded incorrectly to NRD can be reloaded properly without industry involvement. Given this, registrants may want to focus on transition issues other than correcting these data conversion errors. We will use www.NRD-info.ca to provide updates on any progress we are able to make on this issue.

During the implementation of NRD, registrants may encounter situations that create undue burden and require exemptive relief. Staff recognizes this and will attempt to assist registrants when possible.

Please refer your questions to **Dirk de Lint**, Legal Counsel, (416) 593-8090, *ddelint@osc.gov.on.ca* or **David Gilkes**, Manager, Registrant Regulation, (416) 593-8104, email: *dgilkes@osc.gov.on.ca*.

INTERNATIONAL REPORTS

An overview of OSC activities with international organizations to improve the regulation of financial services throughout the world.

IOSCO Task Forces Study Analysts and Credit Rating Agencies

At its February 2003 meeting in Melbourne, Australia, the Technical Committee of IOSCO established a Chairs Committee and gave it a mandate to develop draft guidance in respect of analysts and credit rating agencies (CRAs). The Chairs Committee is composed of the most senior representatives of many IOSCO Technical Committee members. OSC Chairman David Brown is a member of this committee, which is being led by Commissioner Roel Campos of the United States Securities and Exchange Commission.

The work of the Chairs Committee relating to analysts is based upon an extensive prior study carried out by an IOSCO Project Team on Analyst Standards. The Project Team, which completed its mandate in February 2003, studied:
- the varying roles played by analysts employed in brokerage and investment banking firms (sell-side analysts);
- the types of actual and perceived conflicts of interest that confront such analysts and their employers; and
- current and proposed regulatory schemes for analysts in various jurisdictions.

The CRA project began in the spring of 2003 with the completion of a study regarding:
- CRA functions and operations;
- the ways in which financial market participants use ratings;
- the extent to which ratings are used in regulation; and
- the nature of any regulatory oversight of CRAs.

An IOSCO Project Team on CRAs, established to provide expert support for the Chairs Committee, conducted the study and is reviewing the results with a view to establishing guidance on CRAs. The Chairs Committee is expected to report on these mandates to the Technical Committee at its upcoming meeting in Athens, Greece, in September 2003.

IOSCO Publishes Report on Transparency of Short Selling

Short selling, broadly defined as the sale of securities that the seller does not own, continues to attract controversy. Some consider it a practice that adds to market efficiency, others see it as a practice that benefits markets but should be subject to certain controls, and still others believe that it is more likely to damage markets than to enhance them.

Throughout the recent bear market, there has been renewed public concern in some countries about the role of short selling in exacerbating market declines and increasing short-term volatility. Accordingly, the Technical Committee of IOSCO asked its Standing Committee on Secondary Markets to prepare a report examining the role that greater transparency of short selling might play in securities markets and the forms such transparency might take.

The committee's report was published by IOSCO in June 2003 and can be downloaded from the "Library" of public documents on IOSCO's website (*www.iosco.org*).

Emerging Markets Committee Report on the Regulation of Insider Trading

In the Spring 2003 edition of Perspectives, we noted that the OSC belongs to the Technical Committee of IOSCO, one of its two working committees. The second working committee is the Emerging Markets Committee (EMC) which promotes the development and improves the efficiency

of emerging securities markets by establishing principles and minimum standards, preparing training programs for the staff of members and facilitating the exchange of information and transfer of technology and expertise.

In March 2003, the EMC published a report describing the regulatory approaches to insider trading in various IOSCO member jurisdictions and proposing guidelines for the creation and/or amendment of insider trading laws. This report can be downloaded from the Library on the IOSCO website (*www.iosco.org*).

Memorandum of Understanding with the China Securities Regulatory Commission

On May 5, 2003 the Ontario Minister of Finance approved the Memorandum of Understanding (MOU) among the Ontario, British Columbia, Alberta and Quebec Securities Commissions and the China Securities Regulatory Commission (CSRC), dated as of March 21, 2003. In accordance with section 143.10 of the Securities Act, R.S.O. 1990, c. S.5, as amended, the MOU comes into effect, with respect to Ontario, on the day it is approved by the Minister.

The purpose of the MOU is to promote investor protection and the integrity of the securities and futures markets by providing a framework for cooperation, including channels of communication, and increasing mutual understanding and the exchange of regulatory and technical information. The MOU is also a necessary condition for Canadian companies to participate in joint ventures in the securities and fund management business in China. The completion of this MOU therefore opens new business opportunities in China for Canadian financial firms.

The MOU with the CSRC was published in the Bulletin on April 4, 2003. Questions may be referred to: **Susan Wolburgh Jenah**, General Counsel and Director, International Affairs, 416-593-8245, email: *swolburghjenah@osc.gov.on.ca* or **Krista Martin Gorelle**, Senior Legal Counsel, General Counsel's Office, 416-593-3689, email: *kgorelle@osc.gov.on.ca*.

For more information about these and other international initiatives, please contact **Susan Wolburgh-Jenah**, General Counsel and Director, International Affairs, (416) 593-8245, *swolburghjenah@osc.gov.on.ca*, or **Janet Holmes**, Senior Legal Counsel, International Affairs, (416) 593-8282, *jholmes@osc.gov.on.ca*.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The CSA, a council of the 13 securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

Securities Regulators Release Revised Disclosure Rule

Canadian securities regulators issued proposed new requirements on June 20, 2003 for financial statements and other continuous disclosure by public companies. The proposal incorporates modifications made in response to public and industry input on the original proposal published last year.

The proposed rule — National Instrument 51-102 Continuous Disclosure Obligations — would establish enhanced, consistent disclosure standards across Canada. It deals with financial statements, management's discussion and analysis (MD&A), reporting of material changes and significant business acquisitions (a new requirement), annual information forms (AIFs), executive compensation disclosure, shareholder meeting circulars, restricted share disclosure requirements and some other filing requirements.

"This new rule should benefit both issuers and investors," said Stephen Sibold, chair of the Canadian Securities Administrators (CSA). "A uniform set of requirements reduces the cost and complexity that public companies face today in trying to satisfy different standards in various provinces and territories. We have also taken this opportunity to bring our requirements up to date, to streamline or eliminate some requirements, and to address some information gaps in the old system. The public and industry comment on the original proposal has been thorough and very helpful."

Changes from the original proposal include:

- A new, transparent and easy-to-apply concept of "venture issuer" that replaces a variety of categories of junior or small issuers. Venture issuers would be subject to differing treatment in some areas, in response to comments concerning their more limited resources;
- Streamlined requirements for business acquisition reporting;
- Clarification of the process for determining when, and to which investors, disclosure documents must be sent - giving investors an opportunity each year to express their wishes, while reducing document deliveries to investors who do not wish them.

NI 51-102 can be found on CSA member websites. The CSA is requesting comments by August 19, 2003.

SEDI Launched

As of May 5, 2003, public companies, other than mutual funds, are required to register on the System for Electronic Disclosure by Insiders (SEDI) and file issuer profile supplements. The 24-hour online disclosure system required that existing reporting issuers register with SEDI and file such information between May 5 and 30, while any issuer that becomes a SEDI issuer on or after May 30, 2003 has three business days to file its SEDI issuer profile supplement.

SEDI issuers are reporting issuers, other than mutual funds, that are required to file disclosure documents in electronic format through the System for Electronic Document Analysis and Retrieval (SEDAR) - essentially all Canadian public companies.

SEDI replaces paper-based reporting of insider trading data for insiders of SEDI issuers. Insiders began filing insider profiles and insider reports in SEDI June 9, 2003.

Please refer to CSA Staff Notice 55-309 Launch of the System for Electronic Disclosure by Insiders (SEDI) and Other Insider Reporting Matters (Notice 55-309). Amongst other things, Notice 55-309 sets out details about the SEDI launch, including the requirement for SEDI issuers to file an issuer profile supplement as well as the filing requirements for insiders.

SEDI, an initiative of the CSA, will bring faster and better public access to data on insider trades by making the information available electronically, virtually the minute it is filed. The SEDI system was developed for the CSA by CDS INC., a subsidiary of the Canadian Depository for Securities Limited, which also operates SEDAR and the National Registration Database (NRD).

Regulators Survey Industry's Straight-Through Processing Readiness

The Canadian Securities Administrators (CSA) are surveying the ability of market participants to use electronic rather than manual processing interfaces in-house as well as with other firms in the industry. Firms were asked to respond to an online survey of their Straight-Through Processing (STP) readiness between May 9 and May 30, 2003.

"As regulators, we have a responsibility to ensure Canada's capital markets are equipped to meet the industry's future needs and to continue to match global competitors' achievements," said Stephen Sibold, Chair of the CSA and of the Alberta Securities Commission. "Straight-Through Processing is a crucial requirement of our market's future. It requires all industry players, large and small, to remove the manual and redundant systems and processes from the entire lifecycle of a securities transaction. For that reason, we are probing the industry's readiness with an online survey of STP preparedness."

The objectives of the survey were to:

- assess the degree of support for in-house initiatives required for STP;
- identify the relative significance of the issues that need to be addressed to achieve STP;
- assess the current commitment of resources to STP; and
- provide a baseline against which to measure progress towards STP through subsequent surveys.

The Canadian Capital Markets Association (CCMA), an organization founded in 2000 by participants in the Canadian financial services industries to identify and recommend ways to meet the challenges and opportunities faced by our capital markets, is promoting STP strategies among market participants. The CCMA's STP milestones show interim goals in 2004, with the final milestone being the achievement of STP by mid-2005.

Guidelines for Capital Accumulation Plans

On April 25, 2003, the Joint Forum of Financial Market Regulators released for public comment proposed Guidelines for Capital Accumulation Plans (CAPs).

The proposed guidelines describe the rights and responsibilities of CAP sponsors, service providers and CAP members; outline the information and assistance that should be available to CAP members when making investment decisions; and ensure that regardless of the regulatory regime, there are similar regulatory results for all CAP products and services.

CAPs include all employer-sponsored savings plans in which employees are empowered to decide how their savings are invested. They include many defined contribution pension plans as well as, for example, group RRSPs, employer stock purchase plans, and profit sharing plans.

The deadline for submissions is August 31, 2003. Copies of the proposed guidelines can be viewed at *www.capsa-acor.org* or *www.ccir-ccrra.org* and on many CSA member websites.

The Joint Forum of Financial Market Regulators was founded in 1999 by the Canadian Council of Insurance Regulators (CCIR), the Canadian Association of Pension Supervisory Authorities (CAPSA) and the Canadian Securities Administrators (CSA) and also includes representation from the Canadian Insurance Services Regulatory Organization (CISRO) and the Bureau des services financiers in Quebec.

Contacts: **Nurez Jiwani**, Co-chair, Joint Forum Committee on Capital Accumulation Plans (416) 590-8478, or **Ann Leduc**, Co-chair, Joint Forum Committee on Capital Accumulation Plans (514) 940-2199.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission. Copies of Notices of Hearing, Statements of Allegations, Reasons for Decisions and Orders referenced below are available on the Commission's website at www.osc.gov.on.ca.

YBM Disclosure Documents Did Not Contain Full, True and Plain Disclosure of Material Facts

The OSC issued its decision in the matter of YBM Magnex International Inc. on July 2, 2003.

In its decision, the independent panel of OSC Commissioners stated: "This case raises serious questions with respect to the meaning of materiality in the prospectus and timely disclosure provisions of the *Securities Act*. A basic tenet of securities law is that disclosure is generally limited to material matters. Confronted by the dilemma of what should be disclosed to the public, the respondents relied on the concept of materiality as the cornerstone for disclosure. YBM's key disclosure documents did not, we find, contain full, true and plain disclosure of all material facts. YBM also failed to disclose a material change in its affairs forthwith. While disclosing good news with little hesitation, its practice was to restrict the disclosure of bad news."

"YBM's disclosure leads the reader to believe that the risks faced by YBM were no greater than the inherent risks faced by any company operating in Eastern Europe at that time. We find this to be incorrect. YBM was subject to company-specific risks. An investor in YBM's securities had the right to know what specific risks were presently threatening the issuer. Disclosure continues as the main principle for protecting investors, ensuring fairness in the trading markets and enhancing investor trust."

"Despite a hearing which took over 124 hearing days to complete, this case is not about organized crime, money laundering or whether the respondents believed YBM was not a real company. It is about the disclosure of risk. Materiality is reinforced as the standard for such disclosure in securities markets by taking into account the considerations associated with the exercise of judgement and reasonable diligence."

Staff is of the view that the decision clarifies standards for directors and officers and will help prevent another situation like YBM from occurring in the future. It is clear that information about risks, even if they can not be proven to be accurate, must be disclosed to investors. As well, issuers must disclose material changes in their affairs, such as notification by the issuer's auditor that it would not perform any further services, including rendering an audit opinion with respect to financial statements. The panel also found that underwriters must ensure that key personnel do not have conflicts of interest.

OSC Sets Date for Cowpland Hearing

The OSC set the matter of M.C.J.C. Holdings Inc. and Michael Cowpland for hearing from 10 a.m. October 20, 2003 to November 7, 2003. M.C.J.C. is alleged to have committed insider trading. Cowpland is alleged to have authorized as a Director the insider trading of M.C.J.C. and misled Staff of the Commission.

Settlement Approved Over Repeated Late Filings of Financial Statements

The OSC approved on June 26, 2003 a settlement agreement reached with The Farini Companies Inc. and Darryl Harris.

In the settlement agreement, Farini agreed that, in the period between 1996 and the present, it failed on 11 occasions to file its interim financial statements within the time period required by the *Securities Act*. It also agreed that it failed to file its annual financial statements within the required time period on eight occasions. Harris became a director of Farini in 1999, and was therefore a director at the time of the majority of these late filings.

The Commission reprimanded both Farini and Harris. It made an order requiring Harris to resign as a director of Farini by June 30, 2003 and prohibiting him from acting as an officer or director of any issuer for a period of one year.

OSC Approves Settlement Between Staff and Dual Capital Management Limited, Warren Wall and Joan Wall

The OSC convened a hearing June 24, 2003 to consider a settlement reached between Staff of the Commission and the respondents Dual Capital Management Limited, Warren Lawrence Wall, and Shirley Joan Wall. The respondents faced allegations that they participated in an illegal distribution of securities of Dual Capital Limited Partnership and engaged in other conduct contrary to the public interest.

The Commission panel approved the settlement. Vice-Chair Paul Moore, in his oral decision approving the settlement, commented that the conduct of the Walls was egregious. The Commission ordered that Dual Capital, Warren Wall and Joan Wall cease trading securities permanently, with the sole exception that after one year Warren Wall and Joan Wall be permitted to trade securities through a registered dealer for their RRSP accounts.

As a term of the Order, Warren Wall and Joan Wall each provided to the Commission an undertaking never to apply for registration in any capacity under Ontario securities law. Warren and Joan Wall are each prohibited permanently from becoming or acting as an officer or director of any reporting issuer and from becoming or acting as an officer or director of any issuer which has an interest directly or indirectly in any registrant. The Walls are prohibited also from becoming or acting as an officer or director of an issuer, with the exception that they are permitted to be an officer or director of a company providing services in the construction industry, provided that the issuer remains a private company and does not accept funds from the public.

In a separate proceeding, the Commission prosecuted Dual Capital, Warren Wall and Joan Wall in the Ontario Court of Justice in respect of the illegal distribution and sale of the units of Dual Capital Limited Partnership, resulting in their conviction on several charges. On October 30, 2000, the Honourable Justice J.J. Douglas sentenced Warren Wall to a prison term for a total of 30 months and Joan Wall to a

prison term for a total of 22 months. A fine in the amount of $1,000,000 was imposed against Dual Capital Management Limited, the general partner of Dual Capital Limited Partnership.

Police Search Toronto Brokerage Firms

On June 18, 2003, police executed fourteen search warrants at thirteen brokerage firms and one business entity in the Greater Toronto Area in connection with an investigation into alleged stock market manipulation. The searches are part of a joint investigation conducted by the RCMP Greater Toronto Area Commercial Crime Section, the Ontario Securities Commission, the Ontario Provincial Police Anti-Rackets Section, the Greater Toronto Area Combined Forces Special Enforcement Unit and the Toronto Integrated Proceeds of Crime Unit.

The purpose of these searches was to collect documentary and other evidence to support the continuing investigation. The searches of these particular firms do not indicate complicity in the matter under investigation.

"This is part of our on-going integrated law enforcement effort to help ensure that Canada's capital markets remain among the safest in the world," stated Inspector Bob Davis, Officer in Charge of the RCMP Greater Toronto Area Commercial Crime Section. "Our investigation focuses on a small part of the stock market involving high-risk, highly-speculative stocks on the fringe of the stock market. Despite its limited impact on the average investor, we are concerned about any illegal activity that takes place in Ontario's capital markets and we will aggressively investigate any allegations of wrong-doing."

"This investigation is an example of the pro-active stance that regulators and police are taking to ensure the safety of our capital markets," said Ontario Securities Commission Executive Director Charles Macfarlane. "Investors can also help themselves by doing their homework before they invest in a risky, highly-speculative venture."

OSC Cease Trades Discovery Biotech

On June 10, 2003 the OSC issued a Notice of Hearing and a Statement of Allegations against Discovery Biotech Inc. and Graycliff Resources Inc.

The Statement of Allegations states that it appears that sales of the common shares of Discovery were being made by persons who are the employees or agents of Discovery and/or Graycliff. It is further alleged that the common shares were being sold to members of the public in breach of the *Securities Act*. It is further alleged that agents or employees of Discovery and/or Graycliff were making prohibited representations respecting the future value of Discovery common shares and their anticipated future listing on NASDAQ.

On June 4, 2003 the Commission issued a temporary order prohibiting the trading in Discovery common shares by Discovery and Graycliff and their respective employees and agents. The hearing on June 16, 2003 will be to consider an application by Staff to extend this temporary order.

OSC Issues Temporary Cease Trade Order Against Brian Anderson et al

The Ontario Securities Commission on June 5, 2003 issued a temporary order directing Brian Anderson, Leslie Brown, Douglas Brown, David Sloan and an entity known as Flat Electronic Data Interchange (a.k.a. F.E.D.I) to cease trading in certain investments defined by the order. The order also prohibits the respondents from providing certain documents to the public which are attached to the temporary order.

The order was extended by order of the Commission at a hearing held June 19, 2003 until a hearing to be held July 11, 2003.

OSC Releases Decision in the Matter of Stephen Duthie

The Commission released its decision in the Stephen Duthie matter on June 2, 2003. Duthie was a fixed income trader at Phoenix Research and Trading Corporation. Phoenix was registered with the Commission as an Investment Counsel and Portfolio Manager (ICPM). Phoenix provided investment advisory and portfolio management services to, among other entities, the Phoenix Fixed Income Arbitrage Limited Partnership (PFIA LP), a hedge fund. Duthie has never been registered with the Commission.

The panel held that Duthie's trading breached his obligations to his client, PFIA LP. Further, although Duthie asserted that he was not an "adviser" within the meaning of the Act, the panel disagreed. It held that Duthie was engaged in registrable activity and ought to have been registered.

The Commission reprimanded Duthie, ordering that:

- trading in any securities by Duthie cease for 20 years, except for personal trading through a registered broker after a period of 5 years;
- Duthie resign any position he holds as a director or officer of a reporting issuer;
- Duthie is prohibited from becoming or acting as a director or officer of any issuer for 20 years; and
- Duthie pay costs in the amount of $90,000.

OSC Proceedings in Respect of Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.

At the request of the respondents, the hearing of this matter scheduled for Tuesday, June 3, 2003 has been adjourned to a date to be confirmed by the Secretary's Office.

OSC Extends Cease Trade Order Against Andrew Keith Lech

The OSC released reasons relating to its decision, on May 16, 2003, to extend a temporary cease trade order against Andrew Keith Lech. In its reasons, the Commission referred to the evidence tendered by Michael Vear, a forensic accountant in the enforcement branch of the Commission.

Based upon this evidence, Commissioners Lorne Morphy and Derek Brown, and Vice-Chair Paul Moore stated that they were "satisfied that satisfactory information had not been provided by Lech to the Commission within the 15 day period after the making of the temporary order on May 1, 2003, and that the length of time required to conclude the hearing could be prejudicial to the public interest."

The Commission has also issued a number of Directions requiring banks to hold the contents of bank accounts which appear to be associated with Lech's investment activities. To date, Directions have been issued against bank accounts held in Lech's name, as well as in the names of Daniel Shuttleworth, Dennis Yacknowiec, Gary McNaughton and Richard Gordon. These Directions have all been continued by the Superior Court of Justice pending further order of the court.

OSC Approves Settlement Between Staff and Trafalgar Associates Limited and Edward Furtak

The Commission approved a settlement on May 15, 2003 reached between Staff of the Commission and the respondents Trafalgar Associates Limited and Edward Furtak.

As a result of settlement discussions with Staff, Trafalgar redeemed all investments in FFWD-98. Accordingly, all investors in FFWD-98 received from Trafalgar monies representing the full purchase price of their initial investment. The transactions relating to Furtak's client were similarly reversed.

The Commission reprimanded the respondents and ordered that Furtak be prohibited from trading securities for six months. Trafalgar undertook to the Commission that it would not apply for registration with the Commission for four months. The Commission ordered total costs of $7,500 payable by the respondents.

OSC Rejects Proposed Settlement Between Staff and Thomas Stevenson

On May 22, 2003 the Commission convened a hearing to consider a settlement reached by Staff of the Commission and the respondent Thomas Stevenson.

During the material time, Stevenson was registered with the Commission to sell mutual fund securities and was sponsored by CCI Capital Canada Limited. Staff alleges that CCI agreed to sell and did sell securities of a company called Amber Coast Resort Corporation. Staff alleges that CCI was not registered to sell these securities and that Stevenson's conduct facilitated this unregistered activity.

The Commission did not approve the settlement agreement. In accordance with standard Commission procedure, the terms of the Settlement Agreement will remain confidential given that they were not approved.

Staff of the Commission are now assessing options for future steps to be taken in this case.

OSC Issues Reasons for Decision in the Matter of Meridian Resources Inc. and Steven Baran

The OSC, through its independent tribunal, issued on May 7, 2003 its Reasons for Decision in the matter of Meridian Resources Inc. and Steven Baran. The hearing took place on February 24, 2003.

The Commission held that Staff established each of its allegations and that "the terms of the transactions were abusive of the capital markets." As a result, the Commission ordered that Meridian and Baran cease trading for a period of five years. Meridian must not trade in any securities of Meridian. Baran must not trade in securities of any reporting issuer in which Baran, his wife, any of his children, and any other person with whom Baran has an agreement or understanding in respect of investment in the reporting issuer, individually or considered together, hold more that 5% of any class of securities. As well, Meridian and Baran were reprimanded; Baran was ordered to resign all positions that he holds as an officer or director of a reporting issuer; and, Baran is prohibited from becoming or acting as a director or officer of a reporting issuer for seven years.

OSC Approves Settlement Between Staff and John Steven Hawkyard

On April 29, the Commission approved the settlement reached between Staff of the Commission and the respondent John Steven Hawkyard.

Hawkyard was initially the Manager of the Bank of Montreal - Private Banking Services Branch and later moved to BMO Nesbitt Burns Inc. When at Nesbitt, Hawkyard was registered with the Commission. The Nesbitt branch was located in the same building and adjacent to the Bank of Montreal branch.

Hawkyard, while employed at the Bank of Montreal and later at Nesbitt, at the request of John Dunn, prepared and signed letters that contained inaccurate representations and caused another Bank of Montreal employee to prepare and sign these letters. Hawkyard agreed that he acted contrary to the public interest by engaging in this conduct. Dunn is a Respondent and Branch Manager at Nesbitt.

The Commission suspended the registration of Hawkyard for a period of 12 months. As a condition precedent to the reinstatement of his registration, Hawkyard undertook to successfully complete the Ethics Seminar of the Compliance Program, a course offered by the Canadian Securities Institute. The Commission also reprimanded Hawkyard.

On September 23, 2002, the Commission had approved the settlement agreement reached between Staff of the Commission and BMO Nesbitt Burns Inc.

OSC Orders Sanctions Against Brian K. Costello

An OSC tribunal issued reasons for sanctions ordered against Brian K. Costello on April 30, 2003.

The panel found that Costello had acted as an adviser without being registered, as he should have been, and that he did not disclose information that he should have disclosed concerning his conflicts of interest. The panel found that Costello had not complied with Ontario securities law and had acted contrary to the public interest by engaging in these activities.

The evidence repeatedly showed that a principal purpose of Costello's seminars was lead generation. The standard routine used by Costello included collecting names of participants and distributing marketing materials to them, and incorporated various marketing techniques of which consumers and investors should be wary at "educational seminars". The panel, chaired by Paul Moore, OSC Vice-Chair, found that "good educational material should be balanced and free from marketing bias. It should not serve as bait to lead the unsuspecting to specific securities or service providers."

"It would be a disservice to investors, and undermine the efforts of conscientious educators, for us to endorse the view

presented by counsel for Costello that Costello's seminars were primarily educational in nature," said the panel.

The Commission ordered that:
(i) The registration exemption in Section 34 (d) of the Ontario Securities Act for a publisher or writer of a newspaper, newsletter or financial publication shall not be available to Costello for a period of five years;
(ii) Costello submit to a review of his practices and procedures as an adviser during the period from November 11, 2002, being the date of the commencement of the hearing, to April 29, 2003;
(iii) Costello be reprimanded; and
(iv) Costello pay $300,000 of the costs of the Commission in investigating his affairs and the costs of or related to conducting the hearing.

OSC Issues Reasons for Decision in Jack Banks a.k.a. Jacques Benquesus

The OSC, through its independent tribunal, issued on April 23, 2003 its Reasons for Decision in the matter of Jack Banks a.k.a. Jacques Benquesus.

As a result, the Commission ordered:
i) Banks resign any positions he holds as a director or officer of any issuer, and that he be prohibited permanently from becoming or acting as a director or officer of any issuer;
ii) Banks' indifference to the foreseeable consequences to others in the marketplace, together with his singular focus on the monetary benefit that LFI hoped to secure for itself, convinced the Commission that he should be removed from our markets. Therefore, the Commission ordered that Banks cease trading in securities permanently; and,
iii) Banks be reprimanded.

RECENT SPEECH

Excerpts from a keynote address by David A. Brown, Chair, Ontario Securities Commission to the Canadian Society of New York (Harvard Club, New York City, June 4, 2003)

I'm pleased to have the opportunity to speak to you today.

In Canada, our capital market structure and regulation are quite similar to yours. Or at least, they were until mid-summer last year when the Sarbanes-Oxley legislation was passed, requiring the Securities and Exchange Commission to put new rules in place, and changes to the listing requirements at the New York Stock Exchange were proposed as well. Today, I will tell you about the structure of the changes we are making to the regulation of our capital markets and how these changes in many important ways mirror the impacts of the changes made in the U.S. capital markets.

When it comes to securities regulation, we start with a system in which we see significant structural similarities. We both have disclosure-based regimes; we require accounting according to Generally Accepted Accounting Principles, or GAAP; we provide tools for investors and we both take a tough approach to enforcement.

There are slight differences in our GAAPs, in the detail of our regulation, and in the sanctions we mete out. These differences, I believe, exist partly because our markets have evolved in different legal systems, but also partly to reflect differences in our markets' make-up, for instance in the capitalization of our firms or in the proportion of controlled firms accessing our market.

But overall, we see our market as very similar to yours. We also see a similarity in some unhealthy incentives that have crept unnoticed into our market structure over time. What I will discuss today are the robust, made-in-Canada solutions that are sensitive to the circumstances of Canada's markets and securities laws but also largely equivalent and equally robust as the changes being brought about here in the U.S.

Canadian governments and regulators responded quickly to address the regulatory gaps exposed by Sarbanes-Oxley. At both the provincial and federal levels, governments are strongly in favour of taking measures to support investor confidence. They have moved quickly to make important contributions to restoring that confidence.

- Last month the Province of Ontario proclaimed into law a series of amendments to the *Securities Act* and the

(OSC Issues Investor Confidence Rules), continued from page 1)

The rules deal with:
1. CEO and CFO certification of annual and interim disclosures;
2. the role and composition of audit committees; and
3. support for the work of the Canadian Public Accountability Board in its oversight of auditors of public companies.

"Canada is not isolated from the effects of major regulatory changes in the U.S. market," said Mr. Brown. "Since Sarbanes-Oxley became law in the U.S., we have consulted widely and are publishing draft rules that will boost investor confidence by addressing key concerns."

The OSC also released a cost-benefit analysis of the application of the new rules. The study, conducted by the OSC's Chief Economist's office, found that as in virtually every other cost-benefit study, it is easier to identify and quantify the costs than the benefits. Nonetheless, the study demonstrates that even the high-end of the range of potential costs is significantly lower than the low-end of the range of potential benefits. Even taking into account just a partial list of benefits, the study shows that the benefits realized can be expected to be greater than the sum of the costs.

"It is gratifying that the rule changes not only make sense from a policy perspective, they also make sense from a cost-benefit perspective," concluded Mr. Brown.

Full text of the rules is available on the OSC's website at *www.osc.gov.on.ca*. Comments on the proposed rules are requested by September 25, 2003.

Commodity Futures Act. These amendments give the OSC rule-making authority to promote management accountability, auditor independence, and stronger audit committees. It gives the OSC the authority to levy an administrative penalty of up to one million dollars, and the ability to order the disgorgement of profits made as a result of a breach of the *Securities Act*. The legislation also gives the courts authority to impose higher fines and longer jail terms – a strong signal that stiffer sentences are needed in this area.

- The federal finance minister announced in his February budget that increased federal resources will be made available to combat criminal activity in our capital markets, to expand Royal Canadian Mounted Police investigative capacity in this area and increase resources for criminal prosecutions.
- The federal government is also proposing amendments to the Canada Business Corporations Act to impose higher corporate governance standards on CBCA companies.

Shortly after the passage of Sarbanes-Oxley, we launched a very public review of the merits of introducing similar reforms in Canada. We sought advice from stock exchanges, self-regulatory organizations, industry associations, public interest groups and groups of market participants formed to address the crisis in investor confidence. We consulted with governments and market participants from all segments of our markets. We debated the issues with market commentators and other regulators. We attended conferences and seminars and met with focus groups. And, most importantly, we listened.

On June 27, the Ontario Securities Commission will introduce three new rules for comment. This course of action, emerging from the consultation and public discussion of the past 10 months, is appropriate for Ontario and Canada – indeed essential. The rules deal with:

1. CEO and CFO certification of annual and interim disclosures;
2. the role and composition of audit committees; and
3. support for the work of the Canadian Public Accountability Board in its oversight of auditors of public companies.

These rules will be accompanied by a rigorous cost-benefit analysis. Their schedule for implementation is roughly comparable to the SEC draft rules, which have implementation dates ranging from this spring to the fall of 2004.

Support for a robust regulatory approach is tremendous across Canada. Canadian market participants want to know that corporate financial statements mean what they appear to mean, that auditors are responsible to shareholders, and that someone is examining the examiners – or in this case the auditors.

These three rules satisfy these concerns. They are as robust as the rules here in the United States. We believe they will be as effective as the U.S. rules in restoring investor confidence. But they are Canadian rules, with input from Canadian participants, to deal with unique Canadian circumstances.

Ladies and gentlemen, our system and structure for securities regulation must be dynamic and in a constant state of evolution to respond to constantly changing market realities. It has to reflect the broader base of investors, and the need to maintain their confidence in the market's integrity. It has to reflect the fact that we live in an interconnected world.

We have met the challenge that we set for ourselves. We've consulted with stakeholders. We've listened to what they have to say. Canadian measures to restore investor confidence will be as robust as those implemented in the U.S., but they will reflect the differences in Canadian markets:

- we will have comparable rules dealing with analyst standards and potential conflicts of interest;
- we will have comparable reforms to increase auditor independence;
- we will have tough new sanctions to deal with violators;
- CEOs and CFOs of all Canadian public companies will be required to certify financial results;
- audit firms will be required to be in good standing with the new Canadian Public Accountability Board in order to issue audit opinions for public companies; and
- audit committees, independent of management, will have oversight responsibilities in connection with the audit and financial reporting.

These reforms have support from investors, the business community and other Canadian securities commissions.

They will help ensure a Canadian market that is fair to Canadians, and a Canadian economy that is able to compete.

Thank you.

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The OSC Website, www.osc.gov.on.ca includes:
Information on the OSC; Investor Information,
Rules and Regulations, Enforcement Information
and Market Participants.

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ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 6, Issue 4

FALL 2003

Regulator Warns Investors about the Pitfalls of Ponzi Schemes

The OSC has issued a warning to investors to steer clear of Ponzi-style investment schemes...page 2.

Audit Oversight Board Proposes Registration Process for Auditors of Public Companies

The Canadian Public Accountability Board (CPAB) has released a proposed registration process for auditors of reporting issuers .....page 3.

Canadian Public Accountability Board Appoints CEO

The Canadian Public Accountability Board (CPAB) has announced that David Scott, a senior partner with PricewaterhouseCoopers, has accepted the position of Chief Executive Officer.....page 4.

Canadian Securities Administrators Restructure

The CSA has announced fundamental changes to its organizational structure that will see it become a more formal and structured organization ...page 5.

FEATURE

OSC Submission to Federal WPC Committee

Excerpts from the OSC submission to the Wise Persons Committee to review the structure of securities regulation in Canada (July 8, 2003).

The Ontario Securities Commission welcomes the opportunity to comment on the direction of securities regulation in Canada. The Finance Minister of Canada's decision to appoint a Committee of Wise Persons to consider a national approach to securities regulation is a demonstration of the kind of political will needed to reform our regulatory structure and keep up with the changing nature of financial markets.

Over the past few decades, a number of market participants have advocated a level playing field across Canada, with issuers and dealers subject to the same rules and regulations in each province. Many have stressed the need to keep down the costs of review, enforcement and policy development, by taking advantage of economies of scale and scope – economies that can be maximized by dealing with one, rather than multiple, jurisdictions.

A recent study conducted for the Investment Dealers Association of Canada (IDA) found that adopting a single

(continued on page 9)

INDEX

Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets. Copies of Notices and other documents referenced below are available on the Commission's website at www.osc.gov.on.ca.

Regulator Warns Investors About the Pitfalls of Ponzi Schemes

The OSC issued a warning to investors on September 12, 2003 to steer clear of Ponzi-style investment schemes, noting that many con artists use this process to obtain investors' money.

The first known Ponzi scheme was operated by Carl Ponzi himself. In 1920's Boston, Ponzi collected $9.8 million from 10,550 investors, including 75% of the Boston police force. Ponzi then delivered $7.8 million to his investors as "return" on their investments and spent the rest of the money.

Ponzi's original investors were so pleased with their "returns" that they happily helped him find more investors. The Ponzi scheme thrived until the media took notice; Carl Ponzi was finally arrested and ended up in bankruptcy court. In the end everyone lost money; the bankruptcy trustee sued the individuals who made gains from the Ponzi scheme so Carl Ponzi's debts could be paid to his creditors.

How did Ponzi lure so many people into his scheme? Investors were attracted to Ponzi's plan because he guaranteed high returns over a short period of time - profits of 50% every 45 days. Unfortunately these returns were not from the success of a real investment. Instead, the returns were paid from the investors' own money and the contributions of other investors. The essence of the Ponzi scheme is that money is "borrowed from Peter to pay Paul".

Today's Ponzi schemes can look like real investment opportunities. These schemes work well because:

- Investors receive "interest" cheques (which are really the return of their own money), and they encourage their friends and family to invest;
- Investors may regularly receive account statements that show profits (which are not real);
- Investors rarely research the investment, or check the background of the person offering the investment; and
- The Ponzi operator often convinces investors to put their "profits" back into the scheme; ultimately they lose their original investment plus any profits they may have earned.

Ponzi schemes spread by word of mouth. As more people hear of the apparently profitable investment, more investors want to get in on it. Early investors are paid out of money from new investors, at times for many years until the scheme collapses when the number of new investors inevitably falls. With fewer new investors, there is no new money to pay the returns. If you lose your money to a Ponzi scheme, chances are you will not get your money back.

Although a Ponzi scheme can be difficult to spot, the following tips will help you protect your money from con artists:

- Watch out for investment promotions that offer guaranteed high returns and low risk. If an investment has a high return, you are generally taking a large risk with your money.
- Check the registration of the investment, and the person or company offering it. Many Ponzi operators are not registered to sell securities, nor is the investment itself registered. To check, call the OSC Contact Centre toll-free at 1-877-785-1555.
- Get a second opinion from your financial adviser, lawyer or accountant.

You can learn more about fraud and other investment topics on-line at www.InvestorED.ca.

Notice and Request for Comments: Trading During Distributions, Formal Bids and Share Exchange Transactions

The OSC published for comment on August 29, 2003 the proposed Ontario Securities Commission Rule 48-501 — Trading during Distributions, Formal Bids and Share Exchange Transactions. The proposed rule would impose trading restrictions on dealers and issuers involved in a distribution of securities and certain other transactions.

The proposed rule governs the activities of dealers, issuers and others in connection with a distribution of securities, a securities exchange take-over bid, an issuer bid or an amalgamation, arrangement, capital reorganization or similar transaction. The proposed rule is intended to prescribe what is acceptable and otherwise restricts trading activities to preclude manipulative conduct by persons with an interest in the outcome of a distribution of securities or the other transactions set out above.

The proposed rule imposes a "restricted period" on two different groups: "dealer-restricted persons" and "issuer-restricted persons". Dealer-restricted persons are defined in section 1.1 of the proposed rule as including a dealer, a related entity of a dealer, a partner, director, officer, or employee of a dealer or a related entity of a dealer, a person or company acting jointly or in concert with any of these persons or companies, or an investment fund or account managed by any of these

persons or companies. An issuer-restricted person is defined in section 1.1 of the proposed rule as including an issuer, a selling security holder, an affiliated entity, an associated entity, a person or company acting jointly or in concert with any of these persons or companies or an investment fund or account managed by any of these persons or companies.

There are different restricted periods applicable to dealers and issuers. As a starting point, during the applicable restricted period, dealer-restricted persons and issuer-restricted persons are not permitted to bid for or purchase a restricted security. A restricted security is defined as:

- an offered security (which includes a security of the same class of security that is the subject of a distribution, a security offered in a securities exchange take-over bid or an issuer bid, a security issuable pursuant to an amalgamation, arrangement, capital reorganization or similar transaction), or
- a connected security (which includes a security into which the offered security is immediately convertible, exchangeable or exercisable).

A number of exemptions apply to the general trading restrictions in the proposed rule. In particular, the proposed rule provides an exemption to a dealer appointed to act as an underwriter, permitting the dealer to bid for or purchase a restricted security for market stabilization purposes. The price at which the bid or purchase can be made is the lesser of the maximum permitted stabilization price or the highest independent bid at the time.

Comments on this proposed policy are requested in writing on or before November 27, 2003.

Mutual Fund Dealers Association of Canada Corporate Governance By-Law Amendments

The MFDA Terms and Conditions of Recognition as a self-regulatory organization require that the MFDA develop and implement a corporate governance review by no later than the third annual meeting of MFDA Members, scheduled for December 2003. The MFDA Terms and Conditions include a requirement that the composition of the MFDA Board of Directors should cease to include nominees of each of the Investment Dealers Associations of Canada and the Investment Funds Institute of Canada.

The MFDA Board of Directors established a Corporate Governance Committee to consider and make recommendations relating to the corporate governance structure at the MFDA. The Corporate Governance Committee filed its Report with the securities regulatory authorities in the recognizing jurisdictions in February 2003. The Report included recommendations respecting the size, composition and operations of the MFDA Board of Directors and particulars respecting MFDA Regional Councils and disciplinary matters.

The By-law Amendments reflect strong public participation in MFDA corporate governance processes. In particular:

- The MFDA Board will comprise an equal number of public and industry directors. Public directors will have no association to any MFDA Member.
- MFDA Members will participate in the process to nominate directors.
- A Governance Committee chaired by a public director will recommend all nominees for election to the MFDA Board. Two of the four representatives on the Governance Committee will be public directors.
- A public director will chair the MFDA Audit Committee and two of the three directors on the Audit Committee will be public directors.
- A public director will participate in the appointment of all public representatives and additional industry representatives to sit on Regional Councils.
- The Chair of each Hearing Panel created to preside over MFDA disciplinary proceedings will be a public representative of a Regional Council with legal training.

A copy of the Report of the Corporate Governance Committee is available on request and is also posted on the MFDA website: www.mfda.ca.

Audit Oversight Board Proposes Registration Process for Auditors of Public Companies

On September 11, 2003, the Canadian Public Accountability Board (CPAB) released a proposed registration process for auditors of reporting issuers. The draft is available on its new website for a 60-day comment period at www.cpab-ccrc.ca. Gordon Thiessen, the Chair of CPAB, is encouraging audit firms and other interested parties to submit comment.

A new rule proposed by the Canadian Securities Administrators (CSA) on June 27, 2003 (Multilateral Instrument 52-108, *Auditor Oversight*) will require auditors of reporting issuers to be participants in good standing with the CPAB when they issue an auditor's report with respect to their clients' financial statements. The CSA rule, which is open to comment until September 25, is expected to take effect in the new year. The registration deadline proposed by the CPAB is February 29, 2004.

"This is a very important milestone for the CPAB," said Thiessen. "With the appointment of our CEO and the launch of the registration process, the CPAB is in a good position for us to begin our oversight role this year. I encourage both

auditors and those who use audit services to carefully examine the process we are proposing and provide us with comments to ensure that we have captured a process that is fair and transparent."

The CPAB was created in 2002 by Canada's financial and securities regulatory authorities as part of a series of initiatives to restore investor confidence. Its mandate is to promote high quality, independent auditing of public companies in Canada.

Canadian Public Accountability Board Appoints CEO

The Board of Directors of the Canadian Public Accountability Board (CPAB) announced on August 26, 2003 that David Scott has accepted the position of Chief Executive Officer effective October 1, 2003. David Scott is a senior partner with PricewaterhouseCoopers (PwC) which he joined in 1970.

"We are delighted to have found a person with such an outstanding background to head up the CPAB," said Gordon Thiessen, Chair of the CPAB. "With his work on audit quality and risk management and his international experience, David Scott is uniquely suited to lead this important initiative. He will have the full support of the Board of Directors of the CPAB as he takes on the challenge of ensuring a high quality standard of auditing of public companies in Canada."

INTERNATIONAL REPORTS

An overview of OSC activities with international organizations to improve the regulation of financial services throughout the world.

Anti-Money-Laundering and Combating the Financing of Terrorism

A. Revised Anti-Money-Laundering Recommendations

In June 2003, the Financial Action Task Force (FATF) published revisions to its *Forty Recommendations* for combating money laundering. The FATF is an intergovernmental body that reviews money laundering techniques, develops and promotes the implementation of anti-money-laundering (AML) measures globally, monitors members' progress in implementing AML measures and collaborates with other international bodies involved in combating money laundering. Canada is a member of the FATF.

The revised *Forty Recommendations*, available on the FATF's website at www.fatf-gafi.org, are the product of an extensive review and consultation process carried out during the past two years. Major changes to the standards include the following:

- The *Forty Recommendations* specify a list of crimes that must underpin a money laundering offence.
- The customer due diligence process for financial institutions has been expanded.
- Enhanced measures have been introduced for higher risk customers and transactions, including correspondent banking and politically exposed persons.
- AML measures have been extended to certain designated non-financial businesses and professions (including casinos, real estate agents, dealers in precious metals and stones, accountants and lawyers).
- Key institutional measures (*e.g.* relating to international cooperation) have been added.
- Transparency requirements (*e.g.* regarding the provision of adequate and timely information about the beneficial ownership of legal persons such as corporations) have been enhanced.
- Many AML measures have been extended to cover terrorist financing.

B. International Joint Forum Publishes Report on AML/CFT Initiatives

In June 2003, the International Joint Forum (IJF) published a report summarizing AML and combating the financing of terrorism (CFT) initiatives in the banking, insurance and securities sectors.

The report describes the AML/CFT standards that are common to all three sectors. In addition, the report describes for each sector:

- the nature of customer relationships and the specific activities in the sector that pose a relatively higher risk for money-laundering or terrorist financing;
- guidance and recommendations from the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors and the International Organization of Securities Commissions (IOSCO) to address these risks; and
- ongoing and future work by these organizations in the area of AML/CFT issues.

The report also discusses some of the challenges that arise concerning the application of AML/CFT processes in large financial groups.

The report concludes that there do not appear to be any serious gaps or inconsistencies in the approach to AML/CFT in the banking, insurance and securities sectors. The report can be downloaded from the library on the IOSCO website at www.iosco.org.

CPSS-IOSCO Task Force Continues Work on Securities Settlement Systems

Securities settlement systems are an increasingly important component of the global financial system. For this reason, the G10 Committee on Payment and Settlement Systems (CPSS) and the Technical Committee of IOSCO established a special Task Force in 1999 to develop recommendations for the safety and soundness of securities settlement systems.

The Task Force published its *Recommendations for Securities Settlement Systems* in November 2001 and an *Assessment Methodology* for its recommendations in November 2002. The Methodology can be used by regulators for self-assessments or by third parties (*e.g.* the International Monetary Fund) involved in reviewing a country's financial system as part of the Financial Sector Assessment Program. The *Recommendations* and *Assessment Methodology* can be found on the Bank for International Settlements website at www.bis.org/cpss.

One of the Task Force's recommendations concerns central counterparties (CCPs). A CCP interposes itself between a buyer and seller in a transaction, becoming the buyer to every seller and the seller to every buyer. In principle, the establishment of a CCP in a market can reduce liquidity risks and transaction costs because the CCP nets its obligations in respect of each of its participants and thereby indirectly achieves multilateral netting among all participants. This reduces the number and value of deliveries and payments needed to settle a given set of trades.

In addition, if a CCP manages its risks effectively, its probability of default may be less than that of all or most other market participants. If, however, a CCP does not manage risk well, it could increase risks to market participants and adversely affect the financial system as a whole. Thus, a CCP's ability to monitor and control the various risks it incurs and to absorb losses is essential to the sound functioning of the markets it serves.

In light of the increasing importance of CCPs in the global financial system, CPSS and IOSCO have asked the Task Force to carry out further work in this area and develop additional principles regarding CCPs. This work is expected to continue through 2003 into 2004 and to involve a public consultation process.

IJF Reports on Risk Management Practices

In August 2003, the International Joint Forum published two reports, *Trends in Risk Integration and Aggregation* and *Operational Risk Transfer across Financial Sectors*.

Trends in Risk Integration and Aggregation summarizes the results of an IJF survey regarding trends in management policies and procedures designed to ensure awareness of and accountability for risks taken by financial firms, methods and techniques for risk control (risk integration), and the efforts by firms to develop quantitative risks measures that incorporate multiple types or sources of risk (risk aggregation). The purpose of the report is to stimulate dialogue among financial services regulators and regulated firms about these issues.

The second report, *Operational Risk Transfer across Financial Sectors*, focuses on risk transfer within financial conglomerates and between firms, for example between banks and insurance companies. The report is based on studies and interviews with financial services firms and discusses issues such as:

- current and emerging industry practices relating to operational risk and loss events;
- factors that drive operational risk management, such as regulatory requirements;
- instruments for transferring operational risks, especially insurance coverage; and
- the importance of mitigating the impact of low frequency, high severity loss events.

These reports can be downloaded from the library on the IOSCO website at www.iosco.org.

For more information about these and other international initiatives, please contact **Susan Wolburgh Jenah**, General Counsel and Director, International Affairs, (416) 593-8245, swolburghjenah@osc.gov.on.ca, or **Janet Holmes**, Senior Legal Counsel, International Affairs, (416) 593-8282, jholmes@osc.gov.on.ca

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The CSA, a council of the 13 securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

Canadian Securities Administrators Restructure

The CSA announced on September 4, 2003 fundamental changes to its organizational structure that will see it become a more formal and structured organization comprising Canada's 13 provincial and territorial securities regulators.

"As an informal organization, the CSA has been very successful in coordinating and harmonizing securities regulation in Canada – but it's time to take our efforts to the next level," said CSA Chair Stephen Sibold. "Restructuring the CSA is an important step in making capital markets in Canada more effective globally."

To improve upon the existing cooperation and coordination between jurisdictions, the CSA has further developed and formalized its policy and practices, including:

- creation of a Policy Coordination Committee (PCC) to oversee the implementation of the strategic plan and ongoing policy and rule development. Consisting of six members appointed for two-year terms, the first PCC members include the chairs of the securities commissions in British Columbia, Alberta, Manitoba, Ontario, Quebec and Nova Scotia. David Brown, Chair of the OSC, has been elected to serve as Chair of the PCC for an initial one-year term.
- establishment of a permanent secretariat to provide the organizational stability necessary for the effective functioning of a multi-jurisdictional organization. The secretariat will be located in Montréal and will be staffed initially by an executive director, policy coordinator and support staff.
- formalization of a governance structure. The positions of the CSA Chair and Vice-Chair will be elected by the members for a two-year period.

"With a formal governance structure and dedicated resources, we will be able to more effectively achieve our strategic objectives to harmonize legislation across our jurisdictions while maintaining decision-making authority within each province or territory," said Sibold.

CSA Responds to Comments Received on Concept Proposal, Blueprint for Uniform Securities Laws for Canada

The CSA released on July 31, 2003 its responses to the comments received on the Concept Proposal, Blueprint for Uniform Securities Laws for Canada (USL Concept Proposal).

There was a significant response to the USL Concept Proposal with approximately 90 comment letters received from market participants, industry associations and law firms. "These comments will be very useful in assisting the CSA in drafting uniform securities legislation for consideration by each of the provincial and territorial governments of Canada," said Stephen Sibold, Chair of the CSA and Chair of the Steering Committee that is heading up the USL project. "We are on target to publish a consultation draft of the Uniform Securities Act in Fall 2003. Uniform securities legislation will complement the Ministers' initiative to implement a passport system."

However, the specific situation of Québec, the only Canadian jurisdiction based on the Civil Code (as opposed to the common law system used in the other jurisdictions), will require special adjustments. "The goal is for the legislative and regulatory texts to produce similar results," noted Pierre Godin, Chair of the Commission des valeurs mobilières du Québec. "Thus, we might be asked to draft legal texts in Québec which comply with Québec law and the Civil Code, which will lead to harmonization rather than strict uniformity. What is important is that we arrive at a result which is as compatible as possible."

The vast majority of the commenters are supportive of the USL initiative. Most industry participants applauded efforts to implement:

- uniform securities legislation for registration, prospectuses and exemptions;
- passport or one-stop shopping for issuers and registrants; and
- delegation of decision making powers from one securities regulatory authority to another.

A number of commenters expressed concern about the ability to maintain uniformity. In response, the CSA plans to enter into protocols to ensure that regulators co-ordinate changes to securities law. The CSA also intends to propose to governments that they consider adopting an inter-governmental protocol to co-ordinate securities legislation.

A detailed summary of all comments received and the CSA responses as well as the full text of the comment letters can be viewed on the Alberta Securities Commission website at www.albertasecurities.com/policies/comment.html.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission. Copies of Notices of Hearing, Statements of Allegations, Reasons for Decisions and Orders referenced below are available on the Commission's website at www.osc.gov.on.ca.

OSC Sets Date for ATI Hearing

The OSC set the matter of ATI Technologies Inc., K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, Alan Rae and Sally Daub for hearing scheduled to begin on Thursday, February 19, 2004 at 2:00 p.m. and continue until Wednesday, March 10, 2004, at 4:30 p.m.

ATI is alleged to have failed to disclose material information on a timely basis and to have made a misleading statement to Staff.

K.Y. Ho, Betty Ho, Jo-Anne Chang, David Stone, Mary de la Torre, and Alan Rae are alleged to have committed insider trading. Sally Daub is alleged to have made a misleading statement to Staff.

Funds Sent To Receiver in the Matter of Secure Investments, Daniel Shuttleworth and Andrew Keith Lech

On August 11, 2003, the Ontario Superior Court of Justice ordered that the contents of seven bank accounts held in the name of Andrew Keith Lech, Dennis Yacknowiec and G.N.A. Holdings be sent to KPMG Inc., a court-appointed Receiver and Guardian. A motion to transfer the contents of four

bank accounts held in the name of Daniel Shuttleworth to KPMG has been adjourned to a future date. The contents of all of these bank accounts had originally been frozen by the OSC on the grounds that they contained investor funds solicited as part of an illegal securities investment scheme.

By order of the Ontario Superior Court of Justice, KPMG Inc. is the Receiver and Guardian of the assets provided to Andrew Keith Lech by persons who invested money with him. Investors or any persons with a potential claim on the transferred funds should contact Szemenyei Kirwin MacKenzie LLP, counsel to the Receiver and Guardian. Szemenyei Kirwin MacKenzie can be reached by telephone, toll-free, at 1-866-433-8155 or at www.skmlawyers.com.

Executive Director Settlement Reached with Dundee Securities Corporation

Staff of the OSC and Dundee Securities Corporation entered into a settlement agreement which was approved on August 8, 2003 by Charlie Macfarlane, Executive Director.

From August 1999 to May 2000, a registered representative with Dundee assisted clients in purchasing shares of various companies using funds located in their locked-in RRSPs. Concurrently, the clients obtained a loan, at times with the assistance of the registered representative, from the scheme's promoters representing a portion of the purchase price of the shares, varying from approximately 60% to 80%. Dundee had no knowledge of the loans.

Dundee agreed that they failed to adequately supervise these accounts and the registered representative's actions in relation to these accounts, contrary to the public interest and contrary to section 3.1 of OSC Rule 31-505, which requires a dealer to supervise each of its registered salespersons in accordance with Ontario securities law.

Dundee undertakes to review its current compliance function in respect of the issues identified in the Settlement Agreement, and implement any required policies and procedures, and to pay to the Commission the sum of $150,000 in respect of the costs of the investigation with respect to Dundee.

OSC Continues Cease Trade Order Against Mark Edward Valentine

On July 28, 2003, the OSC extended its temporary order against Mark Edward Valentine until at least January 31, 2004. The temporary order continues to suspend Valentine's registration under Ontario securities law and prohibits him from trading in securities, with certain specified exemptions.

Ruling that the terms of the order are "reasonable and fair" to Valentine, the Commission panel, chaired by Commissioner Robert Shirriff Q.C., granted Staff's request for a six month extension. Valentine is also required to demonstrate that he has complied with the Commission's previous order to provide copies of his monthly brokerage account statements.

Settlement Agreement Reached with Robert Davies in the Saxton Matter

The OSC approved a settlement July 21, 2003 between Staff of the Commission and the respondent Robert Davies.

Between October 1996 and December 1997, Davies was a chartered accountant and Saxton Investment Ltd.'s controller. Davies has never been registered with the Commission.

Pursuant to the Settlement Agreement's agreed facts, among other things, Davies failed to keep and maintain the proper books and records and ensure that basic accounting controls were in place. Further, Saxton investors received quarterly account statements that reflected a market value increase in their investment. Davies knew that: (i) these statements were unsubstantiated by any accounting or financial data in Saxton's possession; (ii) there was no record of any revenue generation by the Saxton operations and thus no ability for Saxton to establish the net results of the operation; and (iii) since there was no market for the securities, no market value ought to have been attributed to the securities. By virtue of this knowledge, Davies was aware that the quarterly account statements misrepresented the value of shareholders' investments and were misleading to investors and the Saxton salespeople. Davies did not personally benefit from his misconduct.

In approving the settlement agreement, panel Chair Lorne Morphy said that, as a professional, Mr. Davies' conduct fell far below the level expected of him. Pursuant to the terms of the settlement agreement, the Commission ordered that Davies be prohibited from becoming an officer or director of an issuer for 10 years, imposed a 10 year cease trade order (except trading for Davies' personal accounts after 3 years), reprimanded Davies and ordered costs in the amount of $2,000. Davies agreed to certain continuing education and provided a written undertaking that he will not participate directly in any filings with the Commission for 10 years.

Executive Director Settlement with Barry Magrill

Staff of the OSC and Barry Magrill entered into a settlement agreement which was approved July 9, 2003 by Charlie Macfarlane, Executive Director.

Barry Magrill was the former President of Barnett Magrill Investments Ltd. (BMI). BMI was a registered dealer and for the period 1995 to 2000, almost all of its income was derived from the proceeds of principal trading. Barry Magrill agreed that, as president of BMI, he authorized, permitted or acquiesced in BMI's failure to act in the best interests of its clients and thereby acted contrary to the public interest.

Among other undertakings, Barry Magrill agreed not to apply for registration in any capacity for a period of two years, and to not act as an officer and director of a registrant or issuer in Ontario, with an interest in a registrant, for a period of five years.

Discovery Biotech Inc. and Graycliff Resources Inc. Cease Trade Order Continued

On June 26, 2003, the OSC continued the temporary cease trade order against Discovery Biotech Inc. and Graycliff Resources Inc. until further order of the Commission.

YBM Decision: Disclosure Documents Did Not Contain Full, True and Plain Disclosure of Material Facts

The OSC issued its decision in the matter of YBM Magnex International Inc. on July 2, 2003.

In its decision, the independent panel of OSC Commissioners stated: "This case raises serious questions with respect to the meaning of materiality in the prospectus and timely disclosure provisions of the Securities Act. A basic tenet of securities law is that disclosure is generally limited to material matters. Confronted by the dilemma of what should be disclosed to the public, the respondents relied on the concept of materiality as the cornerstone for disclosure. YBM's key disclosure documents did not, we find, contain full, true and plain disclosure of all material facts. YBM also failed to disclose a material change in its affairs forthwith. While disclosing good news with little hesitation, its practice was to restrict the disclosure of bad news."

"YBM's disclosure leads the reader to believe that the risks faced by YBM were no greater than the inherent risks faced by any company operating in Eastern Europe at that time. We find this to be incorrect. YBM was subject to company-specific risks. An investor in YBM's securities had the right to know what specific risks were presently threatening the issuer. Disclosure continues as the main principle for protecting investors, ensuring fairness in the trading markets and enhancing investor trust."

"Despite a hearing which took over 124 hearing days to complete, this case is not about organized crime, money laundering or whether the respondents believed YBM was not a real company. It is about the disclosure of risk. Materiality is reinforced as the standard for such disclosure in securities markets by taking into account the considerations associated with the exercise of judgement and reasonable diligence."

Staff is of the view that the decision clarifies standards for directors and officers and will help prevent another situation like YBM from occurring in the future. It is clear that information about risks, even if they can not be proven to be accurate, must be disclosed to investors. As well, issuers must disclose material changes in their affairs, such as notification by the issuer's auditor that it would not perform any further services, including rendering an audit opinion with respect to financial statements. The panel also found that underwriters must ensure that key personnel do not have conflicts of interest.

The panel of the Commission made the following orders:

- YBM Magnex International Inc.: trading in any securities of YBM Magnex International Inc. cease permanently;
- Jacob G. Bogatin: be permanently prohibited from becoming or acting as a director or officer of any issuer;
- Igor Fisherman: be permanently prohibited from becoming or acting as a director or officer of any issuer;
- R. Owen Mitchell:
  - resign any positions that he holds as a director or officer of a reporting issuer;
  - be prohibited from becoming or acting as a director or officer of any reporting issuer for five years from the date this order takes effect; and
  - pay investigation and hearing costs in the amount of $250,000;
- Kenneth E. Davies:
  - resign any positions that he holds as a director or officer of a reporting issuer;
  - be prohibited from becoming or acting as a director or officer of any reporting issuer for three years from the date this order takes effect; and
  - pay investigation and hearing costs in the amount of $75,000;
- Harry W. Antes:
  - resign any positions that he holds as a director or officer of a reporting issuer;
  - be prohibited from becoming or acting as a director or officer of any reporting issuer for three years from the date this order takes effect; and
  - pay investigation and hearing costs in the amount of $75,000;
- National Bank Financial Corp.: pay investigation and hearings costs in the amount of $400,000; and
- Griffiths McBurney & Partners:
  - submit to a review of its practices and procedures as an underwriter by an independent person approved by staff of the Commission and institute any changes recommended by that person; and
  - pay investigation and hearing costs in the amount of $400,000.

Reasons for Decision in the Matter of Jack Banks a.k.a. Jacques Benquesus

The OSC released on June 27, 2003 reasons relating to its decision, dated April 23, 2003, wherein the Commission held that Bank's conduct was contrary to the public interest. The Commission also imposed sanctions. As stated by the Commission, "it now appears that there was a misunderstanding."

Following the release of the decision on April 23, counsel for Mr. Banks advised Staff counsel that he understood that he would have an opportunity to make submissions on sanctions if the Commission decided to make a section 127 order. Subsequently, the Executive Director of the Commission made an application under section 144 of the Act. Section 144 gives the Commission the power to revoke or vary a decision. On the return of the application, Staff counsel urged the Commission to proceed with the application. Staff agreed with the sanctions imposed by the Commission, but wanted the opportunity to make submissions as to why the sanctions imposed were in the public interest. However, Mr. Banks insisted he had the option of proceeding by way of appeal or section 144 and that he had chosen the former.

As a result, Commissioners M. Theresa McLeod and H. Lorne Morphy and Vice-Chair Paul M. Moore dismissed the application. Vice-Chair Moore issued separate reasons.

Notice of Hearing and Statement of Allegations Against Robert Walter Harris

The OSC issued a Notice of Hearing and a Statement of Allegations against Robert Walter Harris on June 25, 2003.

The Statement of Allegations states that it appears that Mr. Harris sold shares of Clavos Enterprises with knowledge of material facts with respect to Clavos Enterprises that had not been generally disclosed, contrary to section 76 of the Securities Act. The Statement of Allegations further alleges that Mr. Harris failed to file insider reports as required by the Securities Act.

(OSC Submission to Federal WPC Committee) continued from page 1

national securities regulator would save the brokerage industry, issuers and investors $73 million a year directly, not including intangibles and potential indirect costs.

Market participants have emphasized the need to ensure efficiency and reduce costs for issuers, costs that ultimately flow through to investors.

There is a growing recognition of the importance for Canada to speak with a common voice – in international regulatory fora and in providing fair and effective regulation within our country. Many have focused attention on Canada's uniquely disparate structure for securities regulation, and asked whether it makes sense for Canada to remain the only country in the G7 not to have a single national securities regulator.

The Ontario Securities Commission has been an active participant in and enthusiastic supporter of efforts to more effectively pool regulatory authority and deploy resources. We are convinced the market is no longer prepared to bear the cost of a fractured system, and we recognize that a single regulator would lead to better coordination, significant economies, and greater creativity in the regulatory process.

However, we also recognize political reality. Attempts to create a national securities commission have foundered in the past because of resistance to the notion of a federal commission. Such a significant transfer of responsibility from provincial to federal hands may be politically difficult to achieve. For this reason, a national commission does not necessarily have to be a federal commission. It may be more politically feasible to create a Pan-Canadian Commission, one that is created by the provinces and territories with the support, cooperation and some involvement of the federal government.

A Pan-Canadian commission would provide the national focus, coordination and harmonization that is needed - without disturbing the existing constitutional distribution of powers or aggravating regional concerns that have frustrated progress in this area in the past.

Regional offices would improve the Commission's national effectiveness and draw upon existing provincial expertise, such as oil and gas in Alberta and derivatives in Quebec. Such offices would also have an important role to play in compliance and enforcement.

One way or another, because of its impact on spin-off industries, suppliers, customers, or tax revenues, the vitality of an industry in one part of the country is important to all Canadians. A single national securities regulator would be a recognition that we share a national economy and are part of an international one.

Securities Reform: One Step Forward, Two Half-Steps Back

Over the past three decades, there has been considerable activity in the area of securities reform in Canada. Unfortunately, the existence of distinct commissions and separate regulatory structures across the country inevitably causes uniformity to dissolve into multiple sets of rules and regulations administered independently.

More recently, interprovincial and territorial harmonization has been pursued through the Canadian Securities Administrators (CSA), a largely informal and somewhat ad hoc body voluntarily serving as a national council for the 13 provincial and territorial regulators. The CSA has contributed significantly to harmonizing Canada's securities laws, and their administration and enforcement.

CSA policies, systems and programs play an important role in ensuring consistency, efficiency and fairness in the development and enforcement of securities regulation across Canada. The CSA contributes to national debate and discussion of regulatory issues. It facilitates the work of securities commissions. But it cannot substitute for a single national regulator.

Harmonization: Would Uniform Securities Legislation Provide the Cohesion Canada Needs?

In the face of duplication of resources, regulators are in the midst of a major effort to streamline and harmonize securities regulations. The Uniform Securities Legislation (USL) project is aimed at achieving uniformity among the 13 provincial and territorial sets of securities legislation. It has achieved considerable progress, including forging agreement in concept across the jurisdictions on the hundreds of changes necessary to make Canada's securities laws uniform. That includes, for example, a streamlined registration system (passport registration), delegation of decision making, uniform registration and prospectus requirements, and exemptions.

This kind of initiative is valuable, and is a significant improvement toward streamlining and harmonizing our securities legislation. But even if adopted by all provinces and territories, the USL proposal would still leave Canada with a system in which market participants support 13 different securities regulators. It would still leave Canadian market participants with a regulatory structure in which 13 separate regulators have the capacity to apply rules differently in similar situations. Canada would still face a situation where any one jurisdiction can add to the regulatory burden of all participants across the country.

More Than a Collection of Regions

Some express concern that the unique regional and local characteristics of capital markets would be lost under a national securities regulator. But how distinct are market differences among Canada's provinces? And to what extent do they justify regional regulatory fragmentation?

There are, of course, regional economic concerns within Canada, but no longer is anything just a regional concern; no economic sector or issue is the exclusive concern of any province, territory or region. The oil industry is of as much potential interest to investors in Ontario or Quebec as it is in Alberta. The auto parts industry is of as much potential interest to investors in Alberta as it is to investors in Ontario; the biotech industry is as important to investors in Prince Edward Island as to investors in Quebec.

The existence of separate markets with unique characteristics is seen to justify a fractured regulatory system,

which fosters fragmentation. The markets are more and more global and our own regulatory issues are increasingly North American, let alone national. In this context, achieving the best regulatory structure for Canada should not be impeded by outdated notions of regional markets and interests.

Facilitating Compliance

The National Compliance Review is an example of how the provincial securities commissions work together to review either a particular registrant or an issue on a national basis. We are able to look at an issue across Canada and determine a consistent approach to dealing with it.

However, compliance efforts are sometimes hobbled - or at least slowed - by political borders. Because each commission has jurisdiction strictly over business activities carried out in its province, the scope of a compliance review is limited. When conducting a compliance review of a company with locations in more than one province, any terms and conditions we apply on the registration of the firm would only apply in Ontario, even though the issues identified may also be present in other provinces.

Registrants with locations in more than one province could be subjected to compliance reviews from more than one jurisdiction. While this ensures that regional differences are accounted for, it is inefficient from the registrants' point of view.

Facilitating Enforcement

It is important to consider the potential impact of any change in regulatory structure on our ability to enforce securities laws. The enforcement units of the provincial and territorial commissions work together currently, and provide an effective and cooperative system for the investigation and prosecution of breaches of securities laws across Canada. While the differences in the various acts do create some minor hurdles to the process, enforcement units usually manage to overcome them without unnecessary hindrance.

However, the effectiveness of the current structure depends heavily on cooperation of the individuals involved. Should one of the jurisdictions determine that assisting another jurisdiction is no longer a priority, that would cause a significant impediment. Thus, one advantage of a single national securities regulator would be that it would take the cooperative approach currently employed by the enforcement units of the commissions and carve it into stone.

A National Commission: Surpassing the Political Hurdles

Canada's provincial and territorial securities commissions have been working for greater harmonization, both in rules and regulations and in systems and programs. But progress is slow, inefficient and costly, and leaves Canada at a competitive disadvantage.

More than thirty years ago, Australia was in roughly the same position as Canada regarding securities regulation. After a number of failed initiatives aimed at harmonizing securities regulation, the states and territories ultimately agreed to federal legislation dealing with securities law.

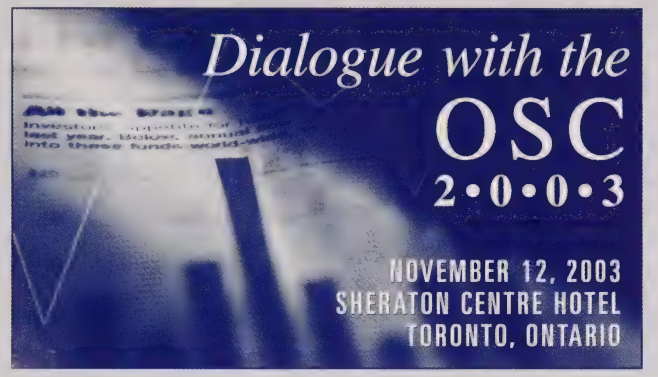
The high cost of fragmentation is a cost Canada can no longer bear; the market no longer finds it acceptable. The emphasis on regional differences over a consistent national approach creates perceptions in the international community of a fragmented capital market and ineffective regulatory structure. Capital markets are international in character and securities regulation in Canada needs to reflect this reality.

It is time for Canada to speak with one voice. It is time to put in place a regulatory structure that will maximize efficiency, take advantage of scale and scope, ensure a level national playing field, and encourage Canadian competitiveness. It is time to move to a national securities regulatory structure.

Thank you for the opportunity to add our voice to the debate on reforming securities regulation in Canada. I would be pleased to further discuss our comments with you.

Sincerely,

David Brown
Chair



- *Learn about emerging changes in securities regulation – straight from the regulators*
- *Get practical and authoritative advice on compliance*
- *Discuss your concerns directly with OSC staff*
- *Network with your peers in the investment industry*

REGULATING FOR TODAY'S MARKET REALITIES

Effective securities regulation must respond to the major issues and challenges of the day. Due to recent trends and events in our capital markets, this past year has been an especially active one for the OSC. Our annual conference offers the best opportunity for market participants to learn more about the policy developments that affect them directly.

DIALOGUE WITH THE OSC 2003 will focus on key topics like the following:

- **Investor confidence rules** – at a time when issues like corporate governance and CEO certification have risen to prominence
- **Financial disclosure standards** – in an age of continually growing expectations
- **Harmonization efforts** – as we experience both groundbreaking successes, and a vigorous debate on future directions
- **The Fair Dealing Model** – developed to finally recognize the importance of advice in modern retail investment relationships

Hear the keynote address from OSC Chair David Brown, and updates on investment funds, significant legal developments, enforcement issues, and more.

Don't miss the most important securities regulation conference of the year

DIALOGUE WITH THE OSC November 12, 2003!

Our program will once again feature a combination of plenary and breakout sessions, and the Capital Markets Information Fair, which provides an excellent opportunity to network with various industry groups. The registration fee includes conference materials, lunch, refreshments, and a closing reception.

At only $395, still the best value on the street. Register now!

For a full program, or to register, visit **www.osc.gov.on.ca/dialogue** or call the Dialogue with the OSC 2003 hotline at **(416) 593-7352** or **1 (800) 360-0493**.

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The OSC Website, www.osc.gov.on.ca includes:
Information on the OSC, Investor Information, Rules and Regulations, Enforcement Information and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 7, Issue 1

WINTER 2004

inside...

OSC Probes Mutual Fund Practices

The Ontario Securities Commission has sent a letter to all managers of publicly offered retail mutual funds that trade in Ontario, in order to confirm that mutual funds have effective policies and procedures in place to detect and prevent trading abuses such as late trading and market timing.....page 2

Integrated Market Enforcement Teams Target Capital Markets Fraud

On November 28, 2003, Federal Solicitor General Wayne Easter launched the first two Integrated Market Enforcement Teams (IMETs) in Canada.....page 3

IOSCO Issues Statements of Principles for Analysts and Credit Rating Agencies

At its September meeting, IOSCO's Technical Committee approved the issuance of statements of principles regarding sell-side analyst conflicts of interest and credit rating agencies.....page 5

Regulators Release Illegal Insider Trading Report

The Canadian Securities Administrators have received a report from an independent task force which recommends practices to address illegal insider trading in Canadian capital markets.....page 7

FEATURE

CSA Release Proposed Uniform Securities Legislation

In December 2003, the Canadian Securities Administrators released consultation drafts of legislation that proposes uniform securities laws. The drafts are being published as part of the CSA's Uniform Securities Legislation (USL) Project, which began in March 2002 with the objective of developing uniform securities legislation within two years.

The consultation drafts consist of a Uniform Securities Act and a Model Securities Administration Act. The Uniform Securities Act contains the core substantive provisions of securities law. The Model Securities Administration Act

(continued on page 12)

INDEX

Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets. Copies of Notices and other documents referenced below are available on the Commission's website at www.osc.gov.on.ca.

OSC Supports Call for Single National Securities Regulator

The Ontario Securities Commission supports the call for a single national securities regulator issued December 17, 2003 by the Wise Persons' Committee (WPC).

"I'm certain it is no surprise that we support the call for Canada to move to a single securities regulator," said OSC Chair David Brown. Mr. Brown indicated that the OSC will review the report in detail before commenting on any specific issues and recommendations contained in the report. "I commend the WPC on the extensive consultations and analysis undertaken in preparing their report and the accompanying research papers."

Mr. Brown added that he concurs that there is considerable interest and momentum for securities regulatory reform in Canada at this time. "In this regard, I look forward to discussing the report with Ontario Finance Minister Sorbara, our regulatory colleagues in other Canadian jurisdictions as well as market participants. This report will undoubtedly contribute to the debate as we move forward with reforms for our securities regulatory system," added Brown.

OSC Chair Welcomes Findings in Regulatory Burden Report

On December 12, 2003, the OSC welcomed the report of the Regulatory Burden Task Force (RBTF) and stated its commitment to responding to the report's recommendations. The OSC had mandated the RBTF in October 2001 to hold informal consultations on how the OSC could reduce regulatory burdens for market participants, without requiring legislative changes or involving regulators in other jurisdictions.

"We commissioned the report because we are committed to continually improving the service we provide to market participants," OSC Chair Mr. Brown said, noting that independent Customer Satisfaction surveys of market participants have given the OSC high marks for customer service.

Senior OSC staff has established a process to review the RBTF recommendations and respond by the end of the current fiscal year, Mr. Brown said. In particular, he noted that the OSC is giving priority to acting on recommendations that are within the mandate of the RBTF and that will help improve customer service by removing burdens and costs.

"Keeping in mind that the interviews were completed in September 2002, we have already had time to act on some of the comments received by the Task Force," said Mr. Brown. "In fact, we have addressed over 20 per cent of the comments to date and are well on our way to addressing a further 25 per cent. A good majority of the remaining recommendations need further study before we can decide how, or if, we will implement them."

"As a measure of our accountability, we will report in our 2004 Annual Report on the measured approach we have taken to implement RBTF recommendations," Mr. Brown said.

OSC Probes Mutual Fund Practices on Late Trading and Market Timing

The Ontario Securities Commission has sent a letter to all managers of publicly offered retail mutual funds that trade in Ontario, in order to confirm that mutual funds have effective policies and procedures in place to detect and prevent trading abuses such as late trading and market timing. Based on the responses received and on a sampling of the industry, the OSC will follow up on the industry's specific practices. In some cases, the OSC may examine funds' internal policies and procedures, as well as examine trading data or request the results of internal tests conducted by funds.

Late trading is illegal and occurs when purchase or redemption orders are received after the close of business, but are filled at that day's price rather than the next day's price. Late trading is a violation of National Instrument 81-102, a nationally-adopted instrument that regulates mutual funds.

Market timing involves short-term trading of mutual fund securities to take advantage of short-term discrepancies between the price of a mutual fund's securities and the stale values of the securities within the fund's portfolio. International funds are most vulnerable to this type of trading abuse, as traders can exploit differences between time zones. Where it happens, market timing may be in violation of mutual fund policies. Further, the heavy trading creates transaction costs, which reduce returns of other longer term investors. As such, market timing arrangements may be in violation of a fund manager's fiduciary duty under section 116 of the *Ontario Securities Act*.

Integrated Market Enforcement Teams Target Capital Markets Fraud

On November 28, 2003, Federal Solicitor General Wayne Easter launched the first two Integrated Market Enforcement Teams (IMETs) in Canada.

The two Greater Toronto Area IMETs are designed to respond swiftly to major capital markets fraud and market-related crimes. They are made up of highly skilled Royal Canadian Mounted Police investigators, lawyers and other investigative experts working together to detect, investigate and deter serious capital markets fraud. They will work closely with securities regulators, federal and provincial authorities, and police of local jurisdiction.

Toronto will eventually have a total of three IMETs operating. IMETs will soon open in Vancouver, Montreal and Calgary to cover Canada's major financial centres. The goal is to have nine IMETs operating in Canada by April 1, 2006.

The IMETs help fulfill a commitment made in the 2002 Speech from the Throne and Budget 2003 to spend up to $120 million over the next five years to boost investor confidence in Canadian financial markets and sustain Canada's economic growth.

For more information, call Cpl. **Michele Paradis**, RCMP, (416) 952-4619.

Scam Artists Can Hide Behind Impressive Names, Addresses and Websites

Investors need to be alert and investigate prospective investments in order to avoid becoming victims of fraud, experts say. Though companies may claim to be associated with a well-known financial organization, they may be name-dropping under false pretences. Similarly, a fictional entity may use an address that is incorrectly spelled, but close enough to a real address to go unnoticed. Fraudulent financial companies may use a fake address in the financial district to further investors' trust in them. Company websites can also mislead about the company's reputation. In one case, a high-rent company address listed on an attractive financial website actually led to a one-room office where one secretary fielded calls to a variety of scam operations.

How can you protect yourself?

- The Office of the Superintendent of Financial Institutions Canada posts warning notices on the website *www.osfi-bsif.gc.ca* about "entities that it believes may be of concern to the business community and the public." The warning notices show the company name and address, their web address and related entities, and the agency to contact if you have any further information to report.
- Check the registration of an investment, and the person or company offering it - call the OSC Contact Centre toll-free at 1-877-785-1555, or check the registrants' listing at *www.osc.gov.on.ca*.
- Check the credibility of company information. The documents that public companies file with securities regulators are available on *www.sedar.com*. Verify any information you receive with a credible source before investing your money.

If you suspect a scam involving securities, contact the Ontario Securities Commission at 1-877-785-1555. You can also learn more about investment fraud and other investment topics on-line at *www.investorED.ca*.

OSC Sets Out Regulatory Regime for Foreign-Based Stock Exchanges

On October 31, 2003, OSC staff published a notice outlining its approach to regulating foreign-based stock exchanges seeking to access Ontario's capital markets. The notice provides a transparent, uniform approach that staff will apply when the Commission considers requests for recognition or exemption from recognition by foreign-based stock exchanges. The approach was prepared in response to a number of recent inquiries made by foreign-based exchanges.

Foreign-based stock exchanges may apply for recognition or for an exemption from recognition. The approach to be taken in exempting a foreign-based exchange is similar to the one used for recognition but seeks to avoid applying duplicative and inefficient requirements on exchanges that are already subject to sufficient regulatory scrutiny in their home jurisdiction. "These proposals continue to build on our framework that allows for a vital, competitive capital market in Ontario that fosters lower trading prices and improved execution of trades," said OSC Chair Brown.

OSC *Staff Notice 21-702* is published in the October 31 issue of the *OSC Bulletin* and is available on the OSC's web site at *www.osc.gov.on.ca*.

OSC Chair Named Laurier Outstanding Business Leader of the Year

OSC Chair David A. Brown has been named the Outstanding Business Leader of the Year by Wilfrid Laurier University. The award selection committee - which includes past winners, faculty from Laurier's School of Business and Economics and

leading business executives who sit on the school's advisory board - selected Mr. Brown in recognition of his outstanding work in promoting stronger regulatory frameworks for good corporate governance in Canada.

"Mr. Brown's personal commitment and accomplishments certainly reflect the characteristics that Laurier wants to instill in its students," said Scott Carson, dean of the School of Business and Economics.

A news release by the university noted that under Mr. Brown's leadership, "the OSC has bolstered its enforcement branch, strengthened investor education initiatives and focused its activities to improve service to market participants and provide the right regulatory response to emerging issues." Brown is the 16th recipient of the award, which recognizes business leaders who exemplify the qualities and characteristics of leadership excellence and management.

InvestorED.ca launches "Getting Back On Track" Calculator

While markets having been heading higher this year, is the recovery enough to offset the losses felt by many investors as we come out of a three-year bear market? A new calculator can help answer that question. The Getting Back on Track calculator, a brainchild of financial author and writer Bruce Cohen, helps investors calculate what it will take to get their portfolios back on track.

Users simply enter their information: what their investment was worth, what it's worth now, what return they had aimed for, and the time frame; the tool will tell them the rate of growth needed to put them back on plan. There are also three examples that users can enter into the calculator so they can see how it works.

This new calculator joins the popular Mutual Fund Fee Impact Calculator and interactive tools from the Canadian Securities Administrators on investorED.ca's Interactive Centre.

For more information about the Investor *e*.ducation Fund, visit the *About Us* section of *www.investorED.ca*.

Notice of Minister of Finance Approval of Amendments to OSC Rule 13-502 Fees

On November 17, 2003, the Minister of Finance approved the amendments to Rule 13-502 Fees, including Forms 13-502F1, 13-502F2, 13-502F3 and 13-502F4, as a rule under the Act and approved the amendments to Companion Policy 13-502CP.

The amendments to the Rule and the Companion Policy came into force on December 1, 2003. The amendments to the Rule and the Companion Policy are published in Chapter 5 of the November 28 OSC Bulletin. In addition, a combined version of the original Rule, Forms and Companion Policy incorporating the approved amendments are published in Chapter 5 of the Bulletin for the user's reference.

To further assist users of the rule, the OSC has issued a Staff Notice on Frequently Asked Questions on Rule 13-502. It is published in the November 28 edition of the OSC Bulletin.

Notice of Minister of Finance Approval of OSC Rule 13-503

On November 13, 2003, the Minister of Finance approved Rule 13-503 (*Commodity Futures Act*) Fees, including Forms 13-503F1 and 13-503F2, as a rule under the Act and approved Companion Policy 13-503CP as a policy under the Act. The Rule and the Companion Policy were published for comment in the OSC Bulletin on May 16, 2003 at (2003) 26 OSCB 3783. The Commission adopted the Rule and the Companion Policy on September 16, 2003 and both were published in final form in the Bulletin on September 19, 2003 at (2003) 26 OSCB 6499. The Rule and Companion Policy came into force on December 1, 2003.

Concurrently with making the Rule, the Commission has revoked Schedule 1 to Regulation 90 of the Revised Regulations of Ontario, 1990, made under the Act (the Regulation). The amendment to the Regulation was also approved by the Minister of Finance on November 13, 2003 and was filed as Ontario Regulation 398/03 on November 24, 2003. The amendment to the Regulation came into force at the time the Rule came into force, on December 1, 2003.

The Rule and Companion Policy are published in Chapter 5 of the November 28 Bulletin.

INTERNATIONAL REPORTS

An overview of OSC activities with international organizations to improve the regulation of financial services throughout the world.

IOSCO Announces Signatories to Multilateral MOU

In May 2002, The International Organization of Securities Commissions (IOSCO) endorsed a comprehensive multilateral memorandum of understanding (MOU) designed to enhance the ability of securities regulators around the world to cooperate and share enforcement-related

information. Among other things, the MOU facilitates the investigation and prosecution of cross-border securities violations.

Since May 2002, IOSCO has been conducting a comprehensive screening process in order to establish that regulators who wish to sign the MOU have the legal capacity to fully comply with its terms. The OSC's Director of Enforcement, Mike Watson, was a member of the Task Force that developed the MOU and is an active member of the committee involved in screening applicants and monitoring signatories' ongoing compliance with the MOU.

At its annual meeting in Seoul, Korea in October 2003, IOSCO announced the names of the first MOU signatories. These include the four provincial securities commissions that participate in IOSCO (the OSC and the securities commissions in Alberta, British Columbia and Quebec), as well as securities regulators in Australia, France, Germany, Greece, Hong Kong, Hungary, India, Italy, Jersey, Lithuania, Mexico, New Zealand, Poland, Portugal, South Africa, Spain, Turkey, the United Kingdom and the United States.

The MOU is available on IOSCO's website at *www.iosco.org*.

IOSCO Issues Statements of Principles for Analysts and Credit Rating Agencies

In the Summer 2003 edition of *Perspectives*, we reported that IOSCO had established special Task Forces to develop statements of principles (Principles) regarding sell-side analyst conflicts of interest and credit rating agencies (CRAs). At its September meeting, IOSCO's Technical Committee approved the issuance of these Principles and accompanying reports.

The Principles for analysts include "Core Measures" intended to eliminate or mitigate problematic practices regarding securities analysts. These Core Measures recommend that standards should be implemented that:

- Prohibit analysts from trading securities or related derivatives ahead of publishing research on the issuer of those securities;
- Prohibit firms that employ analysts from promising issuers favourable research coverage, specific ratings or specific price targets in return for a future or continued business relationship, service or investment;
- Prohibit analysts from participating in investment banking sales pitches and road shows;
- Prohibit analysts from reporting to the investment banking function;
- Prohibit analyst compensation from being directly linked to specific investment banking transactions;
- Prohibit the investment banking function from pre-approving analyst reports or recommendations (except in circumstances subject to oversight by compliance or legal personnel where investment banking personnel review a research report for factual accuracy prior to publication); and
- Require analysts, or firms that employ analysts, to publicly disclose whether the issuer or other third party provided any compensation or other benefit in connection with a research report.

The Principles for CRAs set out the following high-level objectives intended to reinforce the integrity of the credit rating process and assist CRAs in providing investors with informed, independent opinions and analyses:

- CRAs should try to issue opinions that help reduce the asymmetry of information among borrowers, lenders and other market participants.
- CRAs should, as far as possible, avoid activities, procedures and relationships that may compromise or appear to compromise the independence and objectivity of the credit rating operations.
- CRAs should make disclosure and transparency an objective in their ratings activities.
- CRAs should maintain in confidence all non-public information communicated to them by an issuer, or its agents, under the terms of a confidentiality agreement or otherwise under a mutual understanding that the information is shared confidentially.

The Principles and accompanying reports can be downloaded from the library on IOSCO's website at *www.iosco.org*.

IOSCO Adopts Instrument to Assist Regulators in Drafting More Effective Securities Laws

At the Seoul conference, IOSCO adopted a new *Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation*. The Methodology can be used to assist jurisdictions in:

- identifying areas where their securities laws do not meet the international standards set out in the IOSCO Principles;
- categorizing failures in implementation by degree of severity;
- identifying areas for priority action; and
- developing action plans to seek any needed reforms.

The Methodology is likely to be used in a variety of contexts, including self-assessments by IOSCO members, by the World Bank and the International Monetary Fund as part of their Financial Sector Assessment Program and as a tool to provide training and technical assistance to developed and emerging markets.

The Methodology can be downloaded from the library on IOSCO's website at *www.iosco.org*.

OSC Staff Provide Expertise to the IMF and the UK FSA

In 2003, IOSCO nominated Senior Legal Counsel Janet Holmes to conduct a comprehensive assessment of New Zealand's implementation of the *IOSCO Principles*, using IOSCO's new *Methodology*. The assessment was carried out as part of the International Monetary Fund's Financial Sector Assessment Program. Janet joined the IMF-led mission to New Zealand in October and November 2003, where she met with financial sector regulators and market participants and prepared a comprehensive report that will be used by the IMF and New Zealand authorities in discussions regarding financial sector reforms.

Litigation Counsel Yvonne Chisholm will be joining the Enforcement Team at the Financial Services Authority in the UK as part of a one-year exchange program commencing in February 2004. A senior investigator from the UK FSA will be joining the Enforcement Branch at the OSC for the same period.

Randee Pavalow Selected to Chair IOSCO Committee on Market Intermediaries

Capital Markets Branch Director Randee Pavalow has been selected by IOSCO's Technical Committee to chair its Standing Committee on Market Intermediaries. Randee has been an active member of this committee for several years, and previously represented the OSC on IOSCO committees focusing on secondary markets and the internet. This appointment reflects Randee's extensive experience in capital markets regulation and international securities law reform initiatives.

For more information about these and other international initiatives, please contact **Susan Wolburgh Jenah**, General Counsel and Director, International Affairs (416) 593-8245, *swolburghjenah@osc.gov.on.ca*, or **Janet Holmes**, Senior Legal Counsel, International Affairs, (416) 593 8282, *jholmes@osc.gov.on.ca*.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The CSA, a council of the 13 securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

Securities Regulators Release New National Disclosure Rule

Securities regulators have taken another significant step toward a uniform legislative and regulatory framework for Canadian public companies with the publication of a new national rule for continuous disclosure.

The new rule issued December 19, 2003 – National Instrument 51-102 Continuous Disclosure Obligations – will eliminate the problem of companies having to meet different disclosure requirements in multiple jurisdictions in which they report, and will form a basis for implementing an integrated disclosure system. The continuous disclosure requirements addressed by NI 51-102 include: financial statements, annual information forms, management's discussion and analysis (MD&A), material change reports, business acquisition reports and statements of executive compensation.

"The introduction of this new, single harmonized rule demonstrates a cooperative effort by all CSA jurisdictions in establishing a single set of financial reporting and other disclosure requirements for companies that are reporting issuers in more than one jurisdiction," said Stephen Sibold, Chair of the Canadian Securities Administrators and of the Alberta Securities Commission. "It will enhance the consistency of disclosure available to primary and secondary market investors, and assist in establishing a common approach to regulatory review of continuous disclosure filings."

Regulators expect that every CSA member will implement the new rule, and with necessary government approvals, the rule will come into force on March 30, 2004. The new rule requires many companies with a fiscal year starting on or after Jan. 1, 2004 to report their first quarter interim financial statements earlier than before – within 45 days after the end of the quarter, reduced from the current 60 days. Only companies categorized as venture issuers will continue to have 60 days to file their interim reports.

Regulators Approve New Rule to Ensure Equity Monetization Disclosure

Canadian securities regulators have approved a rule that will require insiders to disclose the existence and material terms of insider transactions involving derivatives, including so-called "equity monetization" transactions.

The Canadian Securities Administrators developed Multilateral Instrument 55-103 Insider Reporting for Certain Derivative Transactions (Equity Monetization) to respond to concerns that the existing insider reporting requirements in Canadian securities legislation may not cover certain derivative-based transactions, including equity monetization transactions. Subject to ministerial approvals, the rule is scheduled to come into force on February 28, 2004.

Equity monetization transactions are derivative-based transactions that allow an investor to "cash out" an equity position without formally selling the securities that make up the position. The rule does not prohibit insiders from entering into monetization transactions, but does require that insiders disclose them to the public, so that investors can make their own determination as to their significance.

"While the current rules capture most of these types of transactions, this rule removes any doubt that may have existed," said Stephen Sibold, Chair of the CSA and of the Alberta Securities Commission. "If you are an insider, and you cash out an equity position through an equity monetization transaction, you need to disclose that transaction. If these kinds of transactions are not disclosed, an insider's publicly disclosed holdings do not accurately reflect the insider's 'true' economic position in the company."

In certain circumstances, the instrument will also require that insiders disclose monetization arrangements entered into before the instrument comes into effect that continue to have an impact on an insider's publicly reported holdings.

The rule and related materials are available on most provincial securities commission websites, and is expected to be adopted by all jurisdictions of the CSA, other than British Columbia. The British Columbia Securities Commission has participated in the development of the rule, but has decided to implement similar requirements by proclaiming amendments to the *British Columbia Securities Act* and providing exemptions in a BC instrument instead.

Regulators Release Illegal Insider Trading Report

The Canadian Securities Administrators have received a report from an independent task force which recommends practices to address illegal insider trading in Canadian capital markets. The recommendations in the report focus on addressing illegal insider trading from three directions: prevention, detection and deterrence.

The report was developed by the Illegal Insider Trading Task Force, which was established in September 2002, and included representatives from the Ontario, Quebec, British Columbia and Alberta securities commissions, the Investment Dealers Association of Canada (IDA), the Bourse de Montréal (Mx) and Market Regulation Services Inc. (RS).

Key recommendations in the report include:

- Through information and best practice recommendations, encourage strict adherence to information containment practices by senior management, corporate directors, lawyers and accountants;
- Give investors real-time access to trading data with markers used to identify trades by insiders;
- Improve surveillance capabilities through a shared database among regulators to integrate client data with data from trading on Canadian equities and derivatives markets;
- Reduce the use of offshore accounts in illegal insider trades by identifying jurisdictions that have unsatisfactory regulatory regimes and by evaluating the costs and benefits of requiring offshore financial institutions that open accounts for Canadian investors to consent to identify individuals responsible for specific trades;
- Support the approval of proposed criminal sanctions under the Federal Bill C-46; and
- Recommend the formation of a national subgroup of the Royal Canadian Mounted Police Integrated Market Enforcement Teams to focus solely on illegal insider trading.

The recommendations are available on the CSA website at *www.csa-acvm.ca*.

Regulators Report on Industry's Straight-Through Processing Readiness

On September 19, 2003, the CSA released a report on market participants' readiness to process securities transactions in a fully automated environment rather than through multi-step manual processes. The findings are the result of an online survey of Straight-Through Processing (STP) readiness carried out last May.

Overall, the report shows that a slight majority (52%) of participants feels that their organization is prepared or somewhat prepared for STP, while 34% feel that they are unprepared or somewhat unprepared and 15% don't know.

However, the report also shows that the assessment by firms finding themselves prepared is not supported by the responses to many of the specific quantitative 'progress' questions. In fact, 55% of those organizations who feel prepared reported no STP-related spending in 2002. A significant number of firms also showed no expenditures planned for 2003 and 2004, which appears to be at odds with the degree of STP processing currently being reported.

"Achieving STP readiness industry-wide by mid 2005 is a lengthy and complex undertaking that requires that firms plan and budget activities several years in advance of the deadline," said Stephen Sibold, Chair of the CSA. "The apparent disconnect between firms' self-assessments of their readiness and the actual level of preparations they have underway suggests that we need to take a closer look at industry's state of readiness."

The regulators will consult industry stakeholders to determine the reasons behind the gap between the perceived state of STP readiness and actual state of STP processing. As well, staff will conduct a separate survey with key infrastructure participants, including custodians, transfer agents, exchanges, clearing agencies and third party service providers. The results of the infrastructure survey should shed further light on the overall state of STP preparedness.

Audit Oversight Board Proposes Registration Process for Auditors of Public Companies

The Canadian Public Accountability Board (CPAB) has released a proposed registration process for auditors of reporting issuers.

A new rule proposed by the Canadian Securities Administrators on June 27, 2003 (Multilateral Instrument 52-108, *Auditor Oversight*) will require auditors of reporting issuers to be participants in good standing with the CPAB when they issue an auditor's report with respect to their clients' financial statements. The CSA rule is expected to take effect March 30, 2004. The two-step registration process proposed by the CPAB requires firms to file a notice of their intent to participate by December 31 and to complete their registration by February 29, 2004.

The CPAB was created in 2002 by Canada's financial and securities regulatory authorities as part of a series of initiatives to restore investor confidence. Its mandate is to promote high quality, independent auditing of public companies in Canada.

More information about the CPAB is available on the organization's new web site at *www.cpab-ccrc.ca*.

Proposed National Policy 41-201 *Income Trusts and Other Indirect Offerings* Published for Comment

Proposed National Policy 41-201 *Income Trusts and Other Indirect Offerings* was published for comment on October 24, 2003. The comment period closed on December 23, 2003. The purpose of the Policy is to provide guidance and clarification from the Canadian Securities Administrators to market participants about income trusts and other indirect offering structures, in particular about prospectus disclosure, continuous disclosure, prospectus liability, and sales and marketing materials. The Policy discusses the CSA's views about how the existing regulatory framework applies to non-corporate issuers (such as income trusts) and to indirect offerings, in order to minimize inconsistent interpretations and to better ensure that the intent of the regulatory requirements is preserved.

Although the main focus of the Policy is on the income trust structure in the context of public offerings, the principles also apply to income trust structures in other contexts, such as the reorganization of a corporate entity into a trust, applications for discretionary relief, and the fulfillment by income trusts of their continuous disclosure obligations.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission. Copies of Notices of Hearing, Statements of Allegations, Reasons for Decisions and Orders referenced below are available on the Commission's website at www.osc.gov.on.ca.

OSC Approves Settlement Between Staff and Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.

On December 16, 2003, the Ontario Securities Commission approved a settlement agreement between staff of the commission and Teodosio Vincent Pangia, Agostino Capista and Dallas/North Group Inc.

The proceeding involved the sale of shares in EPA Enterprises Inc. Each of the respondents breached section 25 of the *Securities Act* by selling the shares without being registered to trade in securities, and Pangia breached section 53 of the Act by participating in the distribution of securities without filing and obtaining receipts for a preliminary prospectus and a prospectus. Further, the respondents' conduct was contrary to the public interest.

The sanctions include permanent cease trade orders against all three respondents, permanent prohibitions against Pangia and Capista from acting as a director or officer of any issuer, and the payment of $70,000 in respect of the costs of the investigation. The panel, comprised of Vice-Chair Paul Moore, Commissioner Wendell Wigle, Q.C. and Commissioner Paul Bates, approved the settlement as being in the public interest. Vice-Chair Moore stated that the "seriousness of the sanctions shows that we do not treat these matters lightly" and that permanent sanctions were justified on the facts.

OSC Issues Freeze Directions in the Matter of ATI Technologies Inc.

On December 5, 2003, the Ontario Securities Commission issued directions to two financial institutions to hold the contents of an account held in the name of Sovereign Ltd. On December 11, 2003, the Commission applied to continue the directions in the Ontario Superior Court of Justice. The Court adjourned the application on consent to February 10, 2004 and continued the directions to that date.

On January 16, 2003 Staff of the Ontario Securities Commission issued a Statement of Allegations against ATI Technologies Inc. and others including Jo-Anne Chang and David Stone. In the Statement of Allegations, Staff alleged that Chang and Stone committed illegal insider trading through QDOS Capital Corp., a company incorporated by Chang and Stone in the Turks and Caicos. In the Statement of Allegations, Staff further alleged that Chang and Stone moved the illegally obtained funds through various offshore entities. Staff allege that the funds eventually were transferred to the Sovereign Ltd. account. Staff allege that the funds in the Sovereign Ltd. account were obtained as a result of contraventions of Ontario securities law.

OSC Approves Settlement Between Staff and Assante Financial Management Ltd.

Staff of the Ontario Securities Commission and Assante Financial Management Ltd., including its integrated businesses, entered into a settlement agreement which was approved on November 19, 2003, by Charlie Macfarlane, OSC Executive Director.

From January 1, 2000 to October, 2002, a number of AFM sales people served Ontario clients without being registered in Ontario. AFM agreed that by failing to ensure that its salespeople did not trade on behalf of clients resident in Ontario without being registered contrary to s. 25(1) of the *Securities Act*, they failed to supervise their sales people contrary to Ontario Securities Commission Rule 31-505 which requires a dealer to supervise each of its registered sales people in accordance with Ontario securities law. AFM also agreed that between October 18, 2001 and October 2002, it failed to enforce a written Directive prohibiting out-of-province trading contrary to s.1.2 of Ontario Securities Commission Rule 31-505.

AFM undertakes to submit to an external review of its policies, procedures and internal controls regarding out-of-province trading and to implement any necessary recommendations at its expense, in respect of the issues identified in the Settlement Agreement.

OSC Approves Settlement Between Staff and Jonathan Carley

On December 10, 2003, the Ontario Securities Commission approved a settlement agreement reached by Staff of the Commission with Jonathan Carley.

Carley was a person in a special relationship with Finline Technologies Limited, a reporting issuer in Ontario. He admitted that he purchased securities of Finline with knowledge of a material fact or change with respect to Finline that had not been generally disclosed, contrary to subsection (76) 1 on the *Securities Act*. Carley also admitted his conduct was contrary to the public interest.

Carley was the manager of corporate development with Finline. On February 2, 2000 with knowledge that Finline had exercised its option to purchase Impress Image Compression Inc., which information was not generally disclosed, he purchased 30,500 shares of Finline. Carley sold the shares after the news of the pending acquisition was made public and made a profit of $59,600.

The Commission reprimanded Carley and made an order prohibiting him from trading in securities for 18 months. Carley made a voluntary payment to the Commission of $89,400 which is 1½ times the profit he made and paid $20,000 towards the Commission's costs.

OSC Seeks Leave to Appeal Divisional Court Decision in Donnini Matter

On November 14, 2003, the Ontario Securities Commission filed its notice seeking leave to appeal to the Ontario Court of Appeal two aspects (sanctions and costs) of the decision of the Ontario Divisional Court in respect of Piergiorgio Donnini.

Appeal From Sentence in the Matter of Glen Harvey Harper

On October 31, 2003, the Court of Appeal for Ontario released its decision on the sentence appeal in this matter.

On July 21, 2000, Glen Harvey Harper was convicted in the Ontario Court of Justice on two counts of insider trading in relation to his trading of shares in Golden Rule Resources Inc., a junior mineral exploration company listed on the Toronto Stock Exchange. The trial judge sentenced Mr. Harper to one year's imprisonment on each count, to be served concurrently, and a fine of approximately $4 million based on the application of specific fine provisions in the *Securities Act* governing insider trading offences.

On appeal by Mr. Harper to the summary conviction appeals court, Mr. Harper's term of imprisonment was reduced to six months on each count, to be served concurrently, and the fine was reduced to $1 million on each count. The summary conviction appeals court reduced the fine on the ground that based on the summary conviction appeals court's interpretation of the specific fine provisions, those provisions could not be applied.

The Court of Appeal granted the Crown leave to appeal on the issue of the interpretation of the specific fine provisions governing insider trading offences under the *Securities Act*. The Court of Appeal agreed with the Crown that the summary conviction appeals court had erred in its interpretation of the fine provisions. However, the Court of Appeal dismissed the Crown's request to restore the original fine imposed by the trial judge on the basis that the trial judge had erred in including trading accounts beneficially owned by Mr. Harper's wife and children in the application of the specific fine provisions. As a result, despite upholding the Crown's appeal on the primary issue of the application of the fine provisions for insider trading offences, the Court of Appeal affirmed the fine imposed by the summary conviction appeals court judge of $2 million, in addition to a $400,000 victim fine surcharge. Mr. Harper has already served his six month term of imprisonment.

Supreme Court of Canada Dismisses Appeal by Deloitte & Touche v. OSC

In a unanimous decision issued on October 31, 2003, the Supreme Court of Canada dismissed the appeal of Deloitte & Touche LLP. This appeal arose in the context of a pre-hearing disclosure application brought in the Ontario Securities Commission's proceeding in the matter of Philip Services Corporation. The main issue in the appeal focused on whether the OSC properly ordered disclosure of compelled information which is subject to confidentiality provisions in the *Ontario Securities Act*.

In dismissing the appeal with costs, the Supreme Court made the following comments:

"In short, like the Court of Appeal, I (Justice Iacobucci) find that the decision of the OSC was reasonable and soundly based with respect to the disclosure of all the compelled material to Philip and the officers to allow them in the circumstances to mount a full answer and defence. [...] There is a reasonable possibility that all of the compelled material relating to

Deloitte's audit of Philip will be relevant to the allegations against Philip and the officers. Consequently, the application by the OSC of the relevance standard from Stinchcombe was reasonable in all the circumstances. [...]

The OSC admittedly has a discretion owing to its expertise to order disclosure of the compelled information if found to be in the public interest. Like Doherty J.A., I believe the OSC properly balanced the interests of disclosure to Philip and the officers along with the protection of the confidentiality expectations and interest of Deloitte. In this respect, I am of the view that in making a disclosure order in the public interest under s. 17, the OSC has a duty to parties like Deloitte to protect its privacy interests and confidences. That is to say that the OSC is obligated to order disclosure only to the extent necessary to carry out its mandate under the Act. In this case, the OSC properly weighed the necessary disclosure and the interests of Deloitte."

The Supreme Court's reasons for decision are available at *www.scc-csc.gc.ca*.

OSC Proceedings in the Matter of Universal Settlements International Inc.

On October 27, 2003, the Divisional Court released reasons in the matter of Universal Settlements International Inc. v. the Ontario Securities Commission. The Divisional Court upheld the decision of the Commission, by which it refused to quash an investigation order and summons in respect of Universal Settlements International Inc.

The Court held:

"We cannot see that the Commission, in any way, exceeded its jurisdiction in compelling testimony and production of documents in aid of an investigation. In our view, even though USI is neither a reporting issuer nor a registrant under the Act, it is still subject to the parameters of the Act and must co-operate with the Commission in its investigation. Further, it matters not that viatical settlements are not distinctly described under the Act. We find that the Commission has the power to order such investigations that it deems are in the public interest, and that it is in no way expanding its authority in doing so. The decision of the Commission therefore stands. For the reasons set out herein, the application for judicial review is dismissed."

OSC Issues Notice of Hearing and Statement of Allegations in Respect of Brian Peter Verbeek and Lloyd Hutchinson Ebenezer Bruce

The Ontario Securities Commission issued a Notice of Hearing and Statement of Allegations in respect of Brian Peter Verbeek and Lloyd Hutchinson Ebenezer Bruce on October 8, 2003.

According to the Statement of Allegations, from August 1999 to May 2000, Verbeek, a registered representative, assisted clients in purchasing shares of various companies using funds located in their locked-in RRSPs. Concurrently, the clients obtained a loan, at times with the assistance of Verbeek, from the scheme's promoters representing a portion of the purchase price of the shares, varying from approximately 60% to 80%. It is alleged that Verbeek participated in an illegal distribution and failed to ascertain the general investment needs, objectives and the suitability of the investments for his clients in breach of the *Securities Act*. Staff also allege that Verbeek engaged in conduct that is contrary to the public interest.

Staff also allege that Bruce, a Supervisory Procedures Officer at the now-defunct Buckingham Securities Corporation, failed to adequately supervise Verbeek's accounts and Verbeek's actions in relation to his accounts in breach of the *Securities Act*.

Reasons for Decision in the Matter of Dimethaid Research Inc.

On October 17, 2003, the Commission released reasons respecting its decision on March 7, 2003 to dismiss an application by Dimethaid Research Inc. to review the Director's decision dated February 20, 2003 objecting to a proposed Rights Offering made by the Company. The original objection of the Director was made on the following basis:

1. The Annual Financial Statements of the Company for the year ended May 31, 2002 were not in accordance with generally accepted accounting principles in Canada. In applying CICA Handbook section 3860, Financial Instruments, an acquisition (respecting Oxo Chemie AG) made by Dimethaid ought to have been treated as equity not as a liability.
2. The consideration owing for the acquisition was on an interest free basis over a period of five years. The Director noted that the obligation should be discounted to reflect its true value as at the balance sheet date (being the date of acquisition).

At the commencement of the hearing, Dimethaid advised the Commission that it agreed to restate its financial statements in accordance with point 1 above, concerning the treatment of the obligation as equity not as a liability. Thereafter, the hearing progressed on the issue of discounting and the appropriate value to be ascribed to the transaction.

The Commission found that the subject transaction was business combination to be recorded at fair value, in accordance with the CICA Handbook. The Commission concurred with Staff that the fair value of the consideration given for the transaction should be used to determine the fair value of the business acquired, rather than the assets acquired. According to the Commission, the evidence concerning the assets acquired by Dimethaid, including the patent, represented "a highly uncertain stream of future cash inflows". The Commission stated "...it [was] more appropriate to determine the fair value of the payment obligations - they are known amounts (whether in the form of cash or shares)".

OSC Approves Settlement Between Staff and Normand Riopelle and Rejects Settlement Agreement with Marlene Berry in the Saxton Matter

On October 1, 2003, the Ontario Securities Commission approved a settlement reached between Staff of the Commission and the respondent Normand Riopelle. It rejected a settlement reached between Staff and the respondent Marlene Berry.

Between 1995 and 1998, various Saxton-related companies issued securities, raising approximately $37 million from investors. In 1999, KPMG reported that the value of the Saxton assets, at its highest, was approximately $5.5 million. Staff alleges that the distribution of the Saxton securities was contrary to Ontario securities law.

Berry was employed by Rick Fangeat as the office administrator of Integrated Planning Services. Staff alleges that the vast majority of Integrated Planning Services' business related to the sale of the Saxton securities and that Fangeat acted as the manager of several Saxton salespeople. Staff further alleges that Berry was involved in the illegal distributions of the Saxton securities by, among other things, acting as a liaison between the Saxton salespeople and Saxton's head office and participating in clients' execution of subscription agreements. The panel rejected the settlement agreement reached between Staff and Berry finding that her role in the distribution of the Saxton securities was minor. Staff will not be proceeding further against Berry.

During the material time, Riopelle was a licensed life insurance agent. He has never been registered with the Commission. Riopelle sold $505,700 worth of the Saxton securities to eleven of his insurance clients. Riopelle failed to conduct the appropriate due diligence respecting the nature and quality of the Saxton products and the regulatory requirements to sell such products. Among other things, Riopelle told clients that the Saxton securities were similar in nature to an insurance segregated fund notwithstanding that the Offering Memoranda described such securities as speculative. The Commission approved the settlement agreement between Staff and Riopelle. The panel reprimanded Riopelle and imposed an eleven month cease trade order on him.

Further Funds Sent to Receiver in the Matter of Secure Investments, Daniel Shuttleworth and Andrew Keith Lech

In Orders dated September 3 and 24, 2003, the Ontario Superior Court of Justice determined that the contents of four bank accounts held in the name of Daniel Shuttleworth should be sent to KPMG Inc., a court-appointed Receiver and Guardian. The contents of all of these bank accounts had originally been frozen by the Ontario Securities Commission on the grounds that they contained investor funds solicited as part of an illegal securities investment scheme orchestrated by Andrew Keith Lech of Peterborough, Ontario.

By order of the Ontario Superior Court of Justice, KPMG Inc. is the Receiver and Guardian of the assets provided to Andrew Keith Lech by persons who invested money with him. Investors or any persons with a potential claim on the transferred funds should contact Szemenyei Kirwin MacKenzie LLP, counsel to the Receiver and Guardian. Szemenyei Kirwin MacKenzie can be reached by telephone, toll-free, at 1-866-433-8155 or at *www.skmlawyers.com*.

RECENT SPEECH

Excerpts from an address by David Brown, Q.C., Chair of the Ontario Securities Commission, to the Canadian Bar Association, December 2, 2003.

Ensuring fairness in our markets is crucial to investors, and vital to our economy. One way to demonstrate the importance of capital markets to the Ontario economy is by looking at the number of jobs it generates. In that respect, it is impressive to consider the resilience of the financial sector in Ontario over the past three years - three years of considerable volatility.

Payrolls for financial sector companies have grown by 1 per cent a year. The growth of new financial service products - in areas such as wealth management - has created the opportunity for considerably greater job creation in the years ahead.

To get a sense of the importance of the capital markets to Ontario's economy, consider this: Over 60,000 individual registrants are registered with the OSC here in Ontario - people who work in the securities and mutual fund industries. That's about half the total for the entire country.

There are about 1,700 securities firms in Canada. More than three-quarters of them do business in Ontario.

How big a share of Ontario's economy does the financial sector make up? When you include insurance and real estate as well as finance, it accounts for 20 per cent of Ontario's GDP, one-fifth of all economic activity in the province.

Equity trading on the TSX amounted to over $640 billion last year. That's equal to two-thirds of Canada's GDP. Bond trading across the country came to even more than the Canadian GDP, at more than a trillion dollars in value.

The numbers give concrete form to something that has become increasingly apparent — capital markets are a vital element of the Canadian economy. They are an especially important part of Ontario's economy.

And they are especially important for many of you. If our capital markets migrate south, the demand for many types of legal services will be sharply reduced.

...

Right now, we are working with the Law Society to develop appropriate guidance regarding a lawyer's obligation upon learning that management of a client company is engaged in dishonest, fraudulent, or illegal activity. How far up the ladder are lawyers required to go in reporting such activity?

It is important to keep in mind that when a lawyer represents a corporation, the client is not just management, even if management awarded the retainer. The client is the corporation as a whole. Does it not then follow that the lawyer should be required to bring any information that may indicate inappropriate activity potentially detrimental to the shareholders all the way up the management ladder to the board of directors, if necessary?

Taking the unfairness out of risk-taking must also include addressing illegal insider trading. It is crucial to contain information so that insiders don't get rich on the basis of privileged access to information, while everyone outside the circle pays the bill.

The report of the Insider Trading Task Force, released last month, addresses that, with 32 recommendations to combat illegal insider trading.

The task force called for cooperation across provincial borders - and Canada's securities commissions are responding. The Canadian Securities Administrators, the national coordinating group of provincial and territorial commissions, has decided to make this a priority.

This bodes well for one of the most important task force recommendations: formation of a nationally integrated working group on illegal trading - bringing together the securities commissions, SROs, and the RCMP.

One area the task force examined was the risk of trading taking place on undisclosed information in the period that leads up to a major corporate project like a financing, an acquisition or a take-over. Corporations bring on advisors, then more advisors and still more as their projects approach maturity. With each concentric ripple of growth in the circle of insiders, the risk of illegal insider trading increases. By containing information, we can reduce these risks. This issue often represents a maze for members of the legal profession to navigate. You and your employees are often exposed to inside information in the course of acting for issuers.

Where do you turn for guidance? There are no national or provincial rules for lawyers that directly address the containment of inside information. The task force report calls on the Canadian Securities Administrators to work with the CBA and the provincial law societies to develop substantive best practices for information containment for lawyers.

This issue and the issue of up-the-ladder reporting by lawyers, highlight a curious deficiency in the rules of professional conduct: there are no specific rules providing guidance for representing public corporations. Obviously, many existing rules properly apply to representation of individuals as well as public and private companies. But many of them were written for a different era. Wouldn't it now make sense to combine modern best practices into a comprehensive code of conduct when representing public corporations?

These recommendations are part of the task force's proposals on prevention. The report also emphasizes detection and deterrence.

Detection includes increased and coordinated surveillance and use of technology to find illegal insider trades, such as insider trading alerts between the equity and derivatives markets. It includes development of an electronic database of integrated trade and client data to make it easier to detect and prove illegal insider trading. It includes development of data mining capability to allow review of trading for evidence of patterns of an organized effort to avoid detection and to enhance identification of insider trading involving nominee and offshore accounts.

Deterrence includes increased sanctions for insider trading. In Ontario, legislation was proclaimed earlier this year increasing maximum penalties under the *Securities Act* from two years to five years, and fines from a maximum of one million dollars to up to five million dollars. A recent court case has affirmed a provision of the Act allowing the courts to impose a fine which is the greater of $5 million or a maximum fine of up to three times the profit made or the loss avoided in illegal insider trading cases.

Published academic research indicates that the incidence of illegal insider trading will be reduced through successful enforcement of insider trading laws with severe penalties. However, in Canada, sanctions and remedies vary among provinces, a problem recognized by the Canadian Securities Administrators Uniform Securities Law project. There is a difference among provinces in the maximum penalties available. As well, with the enactment of Sarbanes-Oxley in the United States, a more substantial gap has opened between the maximum terms of imprisonment in the United States and in Canada.

That is why deterrence would be bolstered significantly by passage of the Federal Government's Bill C-46, which would establish new Criminal Code offences of illegal insider trading and tipping. Both the proposed federal law and the CSA's Uniform Securities Legislation project provide opportunities to establish a regulatory framework that effectively addresses illegal trading under criminal, quasi-criminal, administrative and civil processes, sanctions and remedies.

What these measures add up to is an Ontario market that is attractive and conducive to investment. They add up to an opportunity society in which people can build their nest egg. Securities regulation is about maintaining a fair investment environment and eliminating unfair risk. That advances economic opportunity. And that helps create economic growth.

Thank you.

(CSA Release Proposed Uniform Securities Legislation) continued from page 1

contains the procedural components of securities laws and is a companion to the Uniform Securities Act based on the law of Alberta. Each jurisdiction will prepare its own administration act based on this model.

"Today's publication is an achievable, practical and substantial contribution to the ongoing debate on reform of our system of securities regulation. Uniform securities laws would provide significant benefits to participants in Canada's capital markets," said Stephen Sibold, Chair of the CSA and Chair of the USL Steering Committee.

The CSA also published a commentary that provides an overview of the draft Uniform Securities Act and Model Securities Administration Act. The entire package is available on several securities commission websites. Comments on the proposal are requested by March 16, 2004.

The OSC Website, www.osc.gov.on.ca includes:
Information on the OSC, Investor Information, Rules and Regulations, Enforcement Information and Market Participants.

ONTARIO SECURITIES COMMISSION

PERSPECTIVES

Volume 7, Issue 2

SPRING 2004

inside...

OSC Launches Phase Two in Mutual Fund Trading Practices Probe

The Ontario Securities Commission announced that its probe into potential late trading and market timing abuses in mutual funds is moving into its second phase, in which more detailed information from a selection of fund managers is being requested .....page 2

Comments Requested On Proposed Corporate Governance Policies

The OSC published proposals in January that describe best corporate governance practices and require issuers to make disclosures related to these best practices.....page 3

IOSCO Moves to Strengthen International Capital Markets Against Financial Fraud

At its winter meeting, IOSCO's Technical Committee established a special Chairmen's Task Force to organize and coordinate IOSCO's response to emerging issues relating to securities fraud and market abuse .....page 4

New National Disclosure Rules Come Into Force

On March 30, 2004, NI 51-102 came into force, which significantly changes reporting issuers' continuous disclosure obligations.....page 5

FEATURE

Fair Dealing Model Concept Paper Fleshes Out Details Of Major OSC Reform Proposal

On January 29, 2004 the Ontario Securities Commission released a concept paper that offers substantive details of its proposal to reform the way the retail investment industry is regulated. The Fair Dealing Model would regulate the industry on the basis of the relationships people and firms form, rather than the products they buy and sell.

"The Fair Dealing Model will benefit both investors and financial services providers," said Paul Bates, who joined the Fair Dealing Model advisory committee while still CEO of Charles Schwab Canada, and has since been appointed an OSC Commissioner. "Investors would receive more robust

(continued on page 11)

INDEX

Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets. Copies of Notices and other documents referenced below are available on the Commission's website at www.osc.gov.on.ca.

OSC Vice Chair Appointment: Susan Wolburgh Jenah

On March 8, 2004 David A. Brown, Q.C., Chair of the OSC, announced the appointment of Susan Wolburgh Jenah as Vice Chair effective February 18, 2004. Ms. Jenah's appointment to the Commission is for a five-year term. As part of her new duties, Ms. Jenah will chair Commission panels.

"Susan brings a unique blend of highly specific knowledge of securities law and broad-ranging analytical thinking to the Commission," said Mr. Brown. "As General Counsel, she provided insightful analysis of the Securities Act and of past Commission decisions. We know we can turn to Susan for the final word on the law. As Vice-Chair of the Commission, she will contribute her passionate interest in establishing fairness in Commission policy and in balancing the need for efficient capital markets with providing protection to investors. Her involvement in regulatory reform, both nationally and internationally, will be especially important to the Commission as we continue to work with our colleagues to improve, and hopefully to simplify, the securities regulatory system that serves Canada's capital markets."

Most recently, Ms. Jenah was General Counsel and Director of International Affairs to the OSC. As General Counsel, she provided senior legal advice and assistance on a broad range of operational, transactional and policy projects to the Chairman, the Commission, the Executive Director and Staff. As Director of International Affairs, she was responsible for establishing and maintaining relationships with securities regulators in other jurisdictions and representing the Commission on international committees.

Ms. Jenah recently worked on various legislative initiatives, including Bill 198 and Bill 41, and was a member of the Finance Minister's Five-Year Legislative Review Committee, charged with ensuring that Ontario securities legislation is up-to-date and properly enables the Commission to effectively discharge its mandate, which issued its final report in May 2003. She has also worked on a number of Canadian Securities Administrators (CSA) policy initiatives over the years and recently chaired a CSA Committee to develop a National Policy on selective disclosure and disclosure standards generally.

Ms. Jenah joined the staff of the Commission in August 1983 and has held various positions including: Manager, Market Operations; Deputy Director, Legal and Policy, Corporate Finance; Executive Assistant to the Chairman; and Assistant Deputy Director, Commodity Futures. She has a B.A. from the University of Toronto and an LL.B. from Osgoode Hall Law School and was called to the Bar in Ontario in 1982. Ms. Jenah is a frequent participant at various continuing education conferences in the securities field.

OSC Launches Phase Two In Mutual Fund Trading Practices Probe

On February 11, 2004, the Ontario Securities Commission (OSC) announced that its probe into potential late trading and market timing abuses in mutual funds is moving into its second phase. In the first phase of the probe, the OSC received and reviewed the responses of 105 fund managers. As part of the second phase, the OSC is requesting more detailed information from approximately one third of the fund managers surveyed. These fund managers have been selected based on the information they provided and also include a random sampling of fund managers.

The OSC will undertake a statistical analysis of the data collected in the second phase of its probe, and based on the conclusions reached will execute the third and final phase of its planned probe, which, where appropriate, will involve on-site reviews by OSC staff. The fact that the OSC is now moving to a more focused examination of certain fund managers does not mean that improper trading practices have been uncovered in their funds. In addition, the OSC does not preclude returning later to collect information from fund managers that are not included in this second phase. The OSC is coordinating its probe with related probes launched by other securities regulators and self-regulatory organizations.

IDA Releases Results Of Debt Market Regulation Project

On January 28, 2004 the Investment Dealers Association (IDA) released their final summary report of Stage 2 reviews of member IDA Member firms. The origins of the study date back to 2001, when the Canadian Securities Administrators (CSA) and IDA began a joint review of the over-the-counter debt markets in Canada, designed to determine whether any regulatory initiatives are required in that lightly regulated market. The project was overseen by a Steering Committee

with staff of the Ontario Securities Commission (OSC) and Commission des Valeurs Mobilières du Québec (CVMQ) representing the CSA.

The project is proceeding in three stages:
1. A survey of market participants to identify issues;
2. Reviews of the debt market policies, procedures and activities of selected firms in relation to the issues identified in the survey and other issues of concern to the CSA and IDA; and
3. Identification and implementation of remedial measures regarding any problems uncovered in the first two stages. Such remedial measures could, depending on the nature of the identified problems, include rulemaking, more strenuous enforcement of existing rules and/or education of market participants and investors.

The report is available on the IDA's Web site at **www.ida.ca.**

OSC Refuses Exemption Request By Open Access Limited To Join MFDA

Open Access Limited is registered in Ontario as a mutual fund dealer, an investment counsel/portfolio manager and a limited market dealer. Open Access sought an exemption from Rule 31 - 506 which requires Open Access to join the Mutual Fund Dealers Association. That request was denied by a Director of the OSC.

Open Access then brought an application before the Commission seeking to have the decision of the Director set aside. A hearing to consider the application was held on November 13, 2003 and December 9, 2003. On January 21, 2004, the Commission denied Open Access' request for a permanent exemption from the requirement to join the MFDA. The Commission granted Open Access an exemption from MFDA membership until March 31, 2004 in order to permit it to apply for membership in the appropriate self-regulatory organization as required by the Securities Act. Reasons for decision were issued March 4, 2004.

Open Access has filed a Notice of Appeal with the Divisional Court.

Comments Requested On Proposed Corporate Governance Policies

On January 16, 2004, the OSC published proposals that describe best corporate governance practices and require issuers to make disclosures relating to these best practices. The proposals are being considered as well by securities regulators in Saskatchewan, Alberta, Manitoba, Nova Scotia, Newfoundland and Labrador, New Brunswick, Prince Edward Island, the Yukon Territory, the Northwest Territories and Nunavut.

The best practices include measures related to the composition of the board, its mandate and its committees; director education and assessment; as well as codes of business conduct and ethics.

"We propose to require issuers to disclose the corporate governance practices they adopt," added Mr. Brown. "However, because we appreciate that many smaller issuers may have less formal procedures in place to ensure effective corporate governance, our proposal provides for lesser disclosure for venture issuers."

In order to avoid regulatory duplication and overlap, the TSX intends to revoke its corporate governance guidelines and related disclosure requirements when the proposals become effective.

The commissions request comment by May 31, 2004, on proposed Multilateral Policy 58-201 Effective Corporate Governance and proposed Multilateral Instrument 58-101 Disclosure of Corporate Governance Practices, published in Chapter 6 of the January 16, 2004 OSC Bulletin.

OSC Releases Findings Of MD&A Review

The corporate collapses that have occurred around the world in recent years have highlighted the need for improved disclosure and transparency. In particular, attention worldwide has focused on the importance of greater transparency in disclosure of financial information, including both the financial statements and Management's Discussion and Analysis.

Last March 2003, the Canadian Securities Administrators (the CSA) announced it had launched a review to assess how well publicly-traded companies comply with their management's discussion and analysis (MD&A) disclosure obligations. Under this initiative, a number of CSA jurisdictions reviewed a sample of the MD&A of companies in their local jurisdictions.

Concurrent with the reviews in other jurisdictions, staff of the OSC reviewed the MD&A of forty-seven companies, primarily with head offices in Ontario. In January 2004, OSC staff published a notice outlining its findings and comments arising from these reviews. OSC Staff Notice 51-713 is available on the OSC's web site at www.osc.gov.on.ca.

Be On The Alert For Boiler Room Tactics

If you get an unsolicited telephone call about an investment opportunity, be alert to the signs of fraud, warns the Ontario Securities Commission. You might be a target of a boiler room

operation. Boiler room operations wear many disguises, and they are once again rearing their ugly head in Ontario. To gain your trust, the salesperson may boast of a business idea that sounds probable - perhaps a company in the medical industry with a new technological breakthrough for detecting cancer. The pitch is that with your investment, the company could go public on the stock exchange and make you more money.

If the offer is really such a great deal, there should be no need for a broker to cold call strangers to promote it. To avoid becoming a victim of a boiler room, watch out for:

- Unsolicited phone calls.
- High-pressure sales tactics and repeat callers.
- Promises of high returns with no risk.
- Setups. With the first call, the scam artist may only try to gain your trust by offering information about the company and their alleged success. This is a setup for future calls, when you will be pressured to buy.

If you suspect a scam, try to collect as much information as possible about the caller, their name and the company's name, the investment, and the date and time of the call, and contact the OSC at 1-877-785-1555. You can learn more about investment fraud and other investment topics on-line at www.investorED.ca.

INTERNATIONAL REPORTS

An overview of OSC activities with international organizations to improve the regulation of financial services throughout the world.

IOSCO Moves To Strengthen International Capital Markets Against Financial Fraud

At its winter meeting in February, the Technical Committee of IOSCO established a special Chairmen's Task Force to organize and coordinate IOSCO's response to emerging issues relating to securities fraud and market abuse. OSC Chair David Brown is a member of this new Task Force, which is being led by US SEC Commissioner Roel Campos and Dr. Lamberto Cardia, Chairman of the Italian Comissione Nazionale per le Società e la Borsa.

The Task Force has been given a mandate to:

- Identify potential new issues arising from recent events such as the Parmalat matter, including concerns about transparency in bond markets, the role of unregulated entities, the role of complex group structures and appropriate levels of sanctions;
- Review implementation of existing standards, including current mechanisms for international cooperation; and
- Suggest responses aimed at producing appropriate regulatory incentives, such as improving risk identification and assessment by regulators and giving attention to uncooperative and under-regulated jurisdictions.

This project will build on IOSCO's recent work (described in prior editions of *Perspectives*). The Technical Committee also decided to assess progress made on implementing the IOSCO statements of principles relating to auditor independence and oversight, to have its Credit Rating Agencies Task Force develop a code of conduct for CRAs, and to develop standards relating to late trading, market timing and governance in the mutual fund industry.

IOSCO Seeks Comment On Proposed Standards For Central Counterparties And Investment Funds

In the Fall 2003 edition of *Perspectives*, we reported that a Task Force established by IOSCO's Technical Committee and the G10 Committee on Payment and Settlement Systems (CPSS) was developing risk management standards for central counterparties (CCPs). In March 2004, the Task Force published for comment fourteen recommendations for CCPs, addressing matters such as the types of risks that CCPs face, governance arrangements for CCPs, transparency of their systems and processes, efficiency of their operations, and oversight of CCPs. The discussion paper, *Recommendations for Central Counterparties*, is available in IOSCO's on-line library at **www.iosco.org** (document #165). The comment period closes on June 9, 2004.

The Technical Committee of IOSCO is also seeking comment on proposed best practice standards regarding the regulation of fees and expenses charged by investment funds. This discussion paper, *Elements of international regulatory standards on fees and expenses of investment funds*, is available in IOSCO's on-line library at www.iosco.org (document #164). The comment period closes on May 30, 2004.

In addition, the following recent reports are also available in IOSCO's on-line library:

- SRO Consultative Committee, *Survey on regulatory standards regarding the compliance function* (December 2003, document #160)
- Technical Committee, *Stock repurchase programs* (February 2004, document #161)
- Technical Committee, *Regulation of remote cross-border financial intermediaries* (February 2004, document #162)
- Technical Committee, *Index funds and the use of indices by the asset management industry* (February 2004, document #163)

International Joint Forum Pursues Mandate On Credit Risk Transfer

Techniques for transferring credit risk, such as financial guarantees and credit insurance, have been a long-standing feature of financial markets. In the past few years, however, the range of credit risk transfer (CRT) instruments and the circumstances in which they are used have widened considerably. While banks and insurance firms are some of the most active participants in CRT activities, securities firms also often play an important role in CRT activities, acting as intermediaries between institutions that wish to transfer credit risk (often called "risk shedders") and institutions that wish to take on risk (often called "risk buyers").

Responding to a request from the Financial Stability Forum (FSF) in 2003, the International Joint Forum has been conducting an extensive study of CRT activities. The FSF's mandate is to promote international financial stability through information exchange and international cooperation in financial supervision and surveillance. The FSF brings together on a regular basis national authorities responsible for financial stability in significant international financial centres (including the Bank of Canada, the federal Department of Finance and the Office of the Superintendent of Financial Institutions), international financial institutions, sector-specific international associations of regulators (including IOSCO) and supervisors and committees of central bank experts.

The purpose of the International Joint Forum (IJF) study on CRT activities is to gain a better understanding of:

- The principal participants involved in the CRT market;
- How typical transactions are structured and used; and
- The main risks incurred by these participants and the risk management techniques they employ.

The IJF is also reviewing the existing supervisory rules and disclosure/reporting requirements for CRT activities and considering whether CRT activity raises any concerns from a financial stability perspective (e.g. whether CRT activity is leading to undue concentrations of risk inside or outside the regulated financial services sector).

IJF members (including the OSC) received a progress report on this mandate at the IJF winter meeting in February 2004. It is expected that the study will be completed later in 2004.

COSRA Project On Facilitating SME's Access To Capital

The OSC is a member of the Council of Securities Regulators of the Americas (COSRA). Like IOSCO, COSRA's objectives include matters such as investor protection, the maintenance of market integrity, regulatory cooperation and information-sharing. Because COSRA brings together in a regional forum regulators from developed and developing countries, COSRA also has a particular interest in:

- Proposing and implementing reforms that facilitate broad-based participation in securities markets;
- Identifying and, where appropriate, removing, barriers that have no regulatory purpose and impede cross-border investment opportunities and securities market development in the Americas;
- Creating market incentives to stimulate investment in the Americas; and
- Establishing linkages among markets to provide liquidity and enhance investor access to securities markets across the Americas.

Recently, OSC staff have been participating in a COSRA project focusing on the roles that securities markets and securities regulators can play in increasing capital access for small and medium-sized enterprises (SMEs) in the Americas while promoting high standards of investor protection. The project team expects to produce a paper later in 2004 for discussion within COSRA and externally with stakeholders, such as SMEs and potential investors in SMEs in the region.

For more information about these and other international initiatives, please contact **Janet Holmes**, Manager, International Affairs, (416) 593 8282, **jholmes@osc.gov.on.ca.**

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The CSA, a council of the 13 securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

New National Disclosure Rules Come Into Force

On March 30, 2004, National Instrument 51-102 Continuous Disclosure Obligations, came into force. NI 51-102 affects a wide range of continuous disclosure requirements, including new filing deadlines and delivery requirements, the content of some disclosure documents, and new continuous disclosure reporting requirements.

Generally, NI 51-102 applies to every reporting issuer in Canada, other than investment funds. In some cases, the requirements differ depending on what marketplace the issuer's securities are listed on. Foreign issuers benefit from new exemptions under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers.*

Regulators are striving to meet two major goals:

- **One set of rules across Canada**. Historically, issuers reporting in more than one province have faced a different set of disclosure rules in each jurisdiction. NI 51-102 will

benefit issuers by harmonizing the continuous disclosure requirements across Canada.

- **Improved disclosure standards**. Investors will receive higher quality information, on a timelier basis.

There are other rules that took effect on March 30, 2004 that may affect a firm's continuous disclosure obligations:

- National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*
- National Instrument 52-108 *Auditor Oversight*
- Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*
- Multilateral Instrument 52-110 *Audit Committees*

Ann Leduc Appointed CSA Secretary General

On March 16, 2004, Stephen Sibold, Chair of the CSA, announced the appointment of Ann Leduc as Secretary General of the CSA, effective immediately. The creation of this important position and the establishment of a permanent Secretariat in Montreal were announced last fall. As Secretary General, Ms. Leduc will be responsible for the general management and supervision of CSA Secretariat operations and for coordinating the execution of the CSA strategic plan and objectives.

"Establishment of the permanent Secretariat, and the opening of its offices in Montreal, are key elements in the CSA's ongoing leadership efforts to improve the Canadian securities regulatory regime," said Mr. Sibold, who is also Chair of the Alberta Securities Commission. "With the appointment of the new Secretary General and the establishment of a more formal governance structure, the CSA will be better able to effectively harmonize legislation across all Canadian jurisdictions while maintaining decision-making authority within each province or territory."

In providing organizational stability as chief operating officer, Ms. Leduc will coordinate the development and implementation of CSA projects and policy initiatives. With the assistance of a policy coordinator and an administrative staff person, she will also coordinate all CSA activities.

Ms. Leduc was most recently Manager, Regulation for Quebec 's Autorité des marchés financiers (formerly Commission des valeurs mobilières du Québec (CVMQ)) and has extensive background in the securities industry and in the Canadian securities regulatory regime, in particular.

Regulators Extend Comment Period For Consultation Drafts Of Securities Acts

On December 16, 2003, the Canadian Securiti Administrators published for comment drafts of the Unifor Securities Act (USA) and the Model Securities Administratio Act developed under the Uniform Securities Legislatio Project. On December 19, 2003, the Commission des valeu mobilières du Québec (now the Autorité des marche financiers) published a civil law adaptation of the USA These documents, referred to collectively as the "Consultatio Drafts", were published under cover of CSA Notice an Request for Comment 11-404, which invited writte submissions until March 16, 2004.

Securities regulators are accepting written submissions o the Consultation Drafts for a further 60 days, until May 17 2004 for the following reasons:

1. The detailed nature of the Consultation Drafts;
2. The number of other CSA initiatives requiring stakeholde attention in an overlapping time frame; and
3. The March deadline coinciding with the year-end reportin obligations of many reporting issuers and their advisers

Joint Forum Publishes Responses To Its Consultation Package On Sales Principles And Practices

On February 13, 2004, the Joint Forum of Financial Market Regulators released a summary of comments and responses on its consultation package entitled Principles and Practices for the Sale of Products and Services in the Financial Sector. The Canadian Securities Administrators are a constituent member of the Joint Forum together with the Canadian Council of Insurance Regulators and the Canadian Association of Pension Supervisory Authorities.

The Joint Forum released the consultation package on March 6, 2003. The comment period closed on May 29, 2003 and 17 submissions were received. The full text of all the comment letters can be viewed on the following web sites:

- Ontario Securities Commission - www.osc.gov.on.ca
- Canadian Council of Insurance Regulators - www.ccir-ccra.org.

The Joint Forum's objective in undertaking this project was to develop standards of professionalism and fair conduct that Canadian consumers should be able to expect in their financial transactions, regardless of the product or service being sold, or the regulatory regime that applies. The Joint Forum hopes to obtain the endorsement of these principles and practices by key industry participants across the financial services sector.

The proposed practice standards will be introduced as voluntary guidelines, not legal requirements. However, we expect most industry associations and individual firms to adopt the guidelines. This will benefit consumers of financial products and services by setting a minimum standard of conduct that they can expect from all participating firms, without imposing burdensome requirements on the industry.

Regulators Report On Staff's Continuous Disclosure Review Of Income Trust Issuers

On February 13, 2004, CSA staff issued a notice outlining the findings and comments of staff of the British Columbia Securities Commission, Manitoba Securities Commission, Ontario Securities Commission and Commission des valeurs mobilières du Québec arising from a review of the continuous disclosure records of 40 income trust issuers.

The income trust structure has become a popular vehicle for public offerings. In an effort to further understand and evaluate the financial disclosure practices of income trusts, staff conducted a coordinated project to review the continuous disclosure records of 40 income trusts. The income trusts were in various industries and eleven of the 40 trusts had existed for more than one year when we began our review.

Reviews took place between early 2003 and September 2003. The findings suggest that many income trust issuers need to improve the quality of their disclosure. Key findings included the following:

- Twenty-nine of the income trusts committed to change disclosure in future Management Discussion & Analysis (MD&A) filings, annual and interim financial statements and press releases.
- Two of the income trusts were required to re-file their disclosure documents as a result of our review.
- Nine of the income trusts reviewed were not required to change their previously filed disclosure documents or to commit to prospective changes.

The findings are available on the CSA website at www.csa-acvm.ca.

Choose Your Financial Adviser Wisely

Securities regulators are advising Canadians to slow down when choosing a financial adviser. The Canadian Securities Administrators (CSA) warn investors that the best investment decision they may ever make is to take enough time to find a dependable financial adviser.

"A financial adviser can give you sound, objective advice, but it's important that you invest the time to find someone you can openly discuss your investing goals with," says Stephen Sibold, Chair of the CSA. "Just as choosing a good doctor is vital to your physical health, so is selecting a good financial adviser for your financial well-being."

The CSA reminds Canadians that their adviser must work for them. If the adviser is not doing a good job or meeting agreed expectations, there are always other advisers out there. A copy of the CSA brochure, "Choosing Your Advisers", is available on the CSA website at www.csa-acvm.ca or by contacting your provincial securities regulator.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission. Copies of Notices of Hearing, Statements of Allegations, Reasons for Decisions and Orders referenced below are available on the Commission's website at www.osc.gov.on.ca.

In The Matter Of Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited And Pierrepont Trading Inc.

In the Matter of Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited and Pierrepont Trading Inc., on January 20, 2004, the Panel requested that counsel re-attend to make submissions on the following issues:

1. In the Amended Statement of Allegations, it is alleged that the Respondents, Patrick Lett and his companies, traded in securities without being registered contrary to section 25(1)(a) of the Securities Act. What are the "securities" Staff alleges were being traded? and
2. Having regard to submissions made in response to the first question above, was the "trading" by the Respondents and was such trading in Ontario?

In the Reasons issued March 22, 2004, the panel said that the sole issue was whether the Respondents were trading in securities without registration contrary to s.25(1) of the Act. The Respondents, none of whom were registered under the Act, offered a high yield program that had such characteristics sufficient to constitute an "investment contract" and, as such, a "security" as per the definitions contained within the Act. By accepting funds from investors, by attempting to forward

the funds to purchase a bank guarantee, or debenture in order to gain access to the high yield program and by repeatedly providing proof of funds letters to third parties, it was found that the Respondents' actions constituted acts in furtherance of a trade. On the issue as to whether the Respondents were exempted from the requirement to be registered, the Respondents were all based in the Toronto area, had bank accounts in the Toronto area and carried on business in the Toronto area. The trading occurred in Ontario. A substantial part of the Respondents' time during the relevant period was involvement or attempted involvement in the high yield program. This, together with a finding that the investors deposited monies with the Respondents in Toronto and the monies were accepted by the Respondents for the purpose of acquiring high yield programs resulted in a finding that the Respondents were market intermediaries and were not exempted from the requirement of s.25 of the Act to be registered.

OSC Investigation In Royal Group Technologies Inc.
On February 24, 2004, Enforcement staff of the OSC announced that they are conducting an investigation into the disclosure records, financial affairs and trading in the shares of Royal Group Technologies Ltd. The OSC also confirmed that it has referred information more appropriately dealt with by criminal law authorities to the RCMP's new Integrated Market Enforcement Team (IMET).

OSC Confirms Biovail Corp. Investigation
On February 20, 2004, OSC staff confirmed that they are investigating suspicious trading activity, as well as conducting a full review of disclosure records, at Biovail Corp., a Mississauga, Ontario-based pharmaceutical company. The confirmation clarified a report in which a Biovail spokesperson dismissed talk of an OSC probe and stated that no investigation is underway.

"The company is aware of our concerns about trading in the shares of Biovail - enforcement staff has had ongoing discussions with the company since November, 2003," said Michael Watson, the OSC's Director of Enforcement. "It's imperative that we clarify the record and disclose our investigation because we don't want investors to be misled in any way."

Watson said the OSC is prepared to move swiftly if it becomes apparent that action is required to protect investors and maintain the integrity of Ontario's capital markets. He said investigators have gathered extensive information and exchanged correspondence with people related to the matter.

OSC Appeals Divisional Court Decision In Donnini Matter
On February 3, 2004, the Ontario Court of Appeal granted to the OSC leave to appeal two aspects (sanctions and costs) of the decision of the Ontario Divisional Court in respect of Piergiorgio Donnini. The Commission filed its Notice of Appeal to the Ontario Court of Appeal.

OSC Decides Not To Seek Leave To Appeal In Th Matter Of John Bernard Felderhof
On February 9, 2004, the OSC announced that it would nc seek leave to appeal the decision of the Court of Appeal fo Ontario in the matter of John Bernard Felderhof Consequently, staff of the OSC requested that dates b scheduled for a resumption of its action in the Ontari Court of Justice.

Proceedings Commenced Against Andrew Rankir And Daniel Duic
On February 4, 2004, OSC Enforcement Staff announced tha proceedings have been commenced against Andrew Rankin Mr. Rankin was Managing Director of the Mergers and Acquisitions group at RBC Dominion Securities in the period 1999 to 2001. He has been charged with 10 counts of insider trading, together with Daniel Duic, and 10 counts of 'tipping' contrary to sections 76(1) and 76(2) of the Securities Act. The trial will proceed under s.122 of the Act in Provincial Court at Old City Hall on a date yet to be set.

In addition, the Office of the Secretary to the Commission issued a Notice of Hearing along with a Statement of Allegations of Staff against Daniel Duic. Allegations are made that Mr. Duic committed insider trading contrary to s.76(1) of the Act based on material information received from Mr. Rankin that had not been publicly disclosed.

At a hearing on March 3, 2004, a panel of the Commission determined that it is in the public interest for the Commission to approve a settlement agreement entered into by Enforcement Staff and Mr. Duic. The Commission ordered the following sanctions with a reprimand: permanent cease-trade order; permanent prohibition from all exemptions offered by Ontario securities law; permanent prohibition from becoming or acting as a director or officer of a public company; voluntary order to pay profits of illegal trades in the amount of $1.9 million; payment of costs in the matter in the amount of $25 million; and continued co-operation with pending investigation and trial.

The charges against Mr. Rankin and the Settlement Agreement reached between Staff and Mr. Duic are available at **www.osc.gov.on.ca**. The investigation into these matters was commenced as a result of a referral from Market Regulation Services Inc.

OSC Releases Decision Regarding First Federal Capital (Canada) Corporation And Monte Morris Friesner
On February 4, 2004, OSC Enforcement Staff reported the release of the Commission's decision in the matter of First Federal Capital (Canada) Corporation and Monte Morris Friesner. In this case, the Commission examined the contents of a website operated by First Federal, as well as written materials sent to potential investors. The materials contained references to a number of financial products, including "Asset Securitization Management Portfolios" and "prime bank guarantees", referred to collectively as "Trading Programs".

The Commission concluded that the materials contained misleading representations and exorbitant investment promises". They went on to find that First Federal and Friesner had engaged in illegal trading and advising in securities by operating the website and distributing the materials.

In determining the appropriate sanctions in this case, the Commission reviewed evidence of Friesner's criminal record, including previous convictions on fraud-related charges in both Ontario and the United States. They characterized the conduct of the respondents as "reprehensible". As a result, they ordered that First Federal and Friesner must both cease trading in securities permanently, and banned Friesner from ever acting as corporate officer or director. In addition, both First Federal and Friesner must pay the costs of Enforcement Staff's investigation into and prosecution of this case. The final amount of costs will be determined at a hearing to be scheduled by the Commission's Secretary.

A copy of the Commission's reasons for decision in this case is available online at www.osc.gov.on.ca.

In The Matter Of Mark Edward Valentine

Following the hearing in this matter on February 2, 2004, the Commission issued an order extending the temporary order of the Commission dated July 28, 2003. The extended temporary order is on the same terms and conditions as the July 28, 2003 order and is effective until the earlier of July 31, 2004 and the commencement of the hearing of the matter on the merits. The Reasons of the Panel were released on March 4, 2004.

OSC Investigation In Hollinger Matter

On January 22, 2004, the OSC confirmed that it has an investigation underway into matters relating to Hollinger Inc. and related companies. The investigation, underway for some time now, is primarily focused on the companies for which the OSC has lead jurisdiction, while regulators in the United States are primarily focused on the companies over which they have lead jurisdiction. The regulators are each interested in one another's investigations and are sharing information on a regular and on-going basis.

In its investigation, the OSC has gathered a substantial amount of information from a variety of sources, and is interviewing people related to the matter. As in any OSC investigation, any violations of securities law unveiled could lead to disciplinary action and sanctions. As well, the OSC will move swiftly if it becomes apparent that action is required to protect investors.

While the OSC does not usually disclose ongoing investigations, the regulator does, in limited circumstances, disclose investigations when public confirmation is needed to reassure the public and to maintain the integrity of Ontario's capital markets.

OSC Commissioners Issue Decision In The Matter Of M.C.J.C. Holdings Inc. And Michael Cowpland

On December 12, 2004, an independent panel of the Ontario Securities Commission issued its decision in the matter of M.C.J.C. Holdings Inc. and Michael Cowpland. After lengthy and difficult deliberations and in view of all the circumstances, the panel accepted the joint recommendations of counsel as in the public interest, which were as follows:

- The respondents paid $500,000 to the Investor Education Fund.
- Michael Cowpland was prohibited from becoming or acting as a Director of a reporting issuer for two years from December 12, 2004.
- M.C.J.C. Holdings Inc. and Michael Cowpland were hereby reprimanded.
- M.C.J.C. Holdings Inc. was ordered to pay $75,000 to the Commission in respect of a portion of the Commission's costs with respect to this matter.

RECENT SPEECH

Excerpts from an address by David Brown, Q.C., Chair of the Ontario Securities Commission, to the Investment Funds Institute of Canada, April 5, 2004.

I am honored to participate in this official launch of the annual Investor Education Month public awareness campaign. Occasions such as these … when regulators, industry groups and self-regulatory organizations come together in common cause … demonstrate just how much we can achieve when we all work together for the public good. Occasions such as these should also serve to remind us exactly who matters most when it comes to mutual funds. It's not me, as a regulator, and it's not those of you who represent a specific fund company or the industry as a whole. No, the people who matter most are not even here in the room this morning … of course I'm referring to the millions of investors who own units in your funds or shares in your companies.

During the last two or three years individuals saw the value of their portfolios substantially reduced as markets took a tumble from their peaks of March 2000. Of course, such volatility is to be expected. We spend a lot of time telling investors to do their homework, to diversify their holdings, and to stay in for the long haul. There's no question that investors today are far wiser than they ever were before as a result of programs such as Investor Education Month.

So, yes, let's continue to educate investors, but we have another daunting task ahead … one that is even more important … and that task is to regain the full faith and confidence of investors. That is what I want to talk to you about this morning … trust … and what we must do to win back that trust.

We Canadians pride ourselves on our cultural and societal differences from Americans, but when it comes to capital markets, we live and work in the same borderless world. For the most part, this is an advantageous position for us to be in. We can enjoy what we regard as a better life style yet still be players in that larger arena. But such easy access cuts both ways. When criminal charges are laid in the U.S., when executives plea bargain and household names are found guilty … all of those activities have a toxic impact on how Canadian investors feel about their own money and their own money managers as the bad news spills north.

The total amount of fines and fees levied so far is approaching US$2 billion. The names involved are hardly fly-by-night firms that no one has ever heard of before. In March, Bank of America and FleetBoston Financial agreed to pay US$675 million in fines and fees to settle fraud charges related to improper mutual fund trading. In addition, regulators took the unprecedented step of ordering the removal and replacement of eight directors serving on the board of Bank of America's Nations Funds. A further two dozen fund companies and brokerage firms are under investigation with more settlements expected. Trust is the essence of any fiduciary relationship and that trust between the industry and the investor was breached because some simple home truths were recklessly abandoned by too many people at the top. Executive larceny and outright greed replaced best practices and good corporate governance. In such a race to the bottom, investors felt angry and rightly so.

What went wrong was aptly captured in a comment I read a few weeks back by Kathryn McGrath, a lawyer and former fund regulator in the U.S, who said this: "In the scramble to survive and make money, some people in the industry forgot about that fundamental principle: It's the shareholders' money, stupid." Mutual fund companies are getting it from all sides, not just from Eliot Spitzer or the Securities and Exchange Commission. Even the legendary Warren Buffet has taken aim at the industry in his latest letter to shareholders. This marks the second year in a row that the Oracle of Omaha has attacked mutual fund companies, most recently that group he calls "lapdog directors" who are supposed to oversee the selection and performance of fund managers. Instead, as Buffet noted, some of those directors were asleep at the switch, suffering from what he called a "boardroom atmosphere" that "sedates their fiduciary genes." Buffet then posed a pretty basic question, "If you don't know whose side someone is on, he's probably not on yours."

To be sure, the business of money management has hardly been alone in suffering a steep decline in public esteem. Steroids in home-run hitters, violence in hockey, scandals in public spending, fabrication of facts by journalists … there's hardly any segment of society that does not seem to be under siege. The difference is this: We can't do anything about those other problems, but we can tackle the question of integrity in business. Let me turn now to the second part of my speech … the ongoing OSC probe of the mutual fund industry. Last year, when the problems in the U.S. mutual fund industry first surfaced, there were those who demanded we take immediate, parallel action. Others said, don't bother, everything's fine, there's no hanky-panky here.

We followed neither of those suggestions. Instead, our approach was this: Get the facts before we react. That is why last November we sent a questionnaire to 105 managers of publicly offered retail mutual funds that trade in Ontario. We did not do so because we had any hard evidence that Canadian firms were doing anything wrong. No whistleblower had come forward here, as has happened in the U.S. Indeed, our investigation would still welcome any insight that might be garnered from such a knowledgeable source. Openness and honesty is to everybody's benefit.

What we sought to do in that November survey w simply to ask about policies and procedures that each firm ha in place to prevent late trading and market timing. We aske if there had been any abuses of those policies in the previou two years. If anything approaching abuse had occurred, w further requested more information about such activity an what steps had been taken to prevent recurrences.

Let me also say that this is not a witch hunt, neither is it a fishing trip. But if there is wrongdoing, this probe will uncover it.

We carefully reviewed the responses we received and found a few areas that looked like they'd benefit from further scrutiny. As a result, in February we launched the second phase of our probe. That phase involved asking about one-third o all respondents … as well as some other firms selected a random … for more detailed information. Submission of that data was timely and our statistical analysis is almost complete The third and final phase of the probe will soon commence and will include, where appropriate, on-site visits by OSC staff.

Let me say how much we appreciate the co-operation we have received, not just from individual firms but also from the Mutual Fund Dealers Association of Canada and the Investment Dealers Association.

Let me also say that this is not a witch hunt, neither is it a fishing trip. But if there is wrongdoing, this probe will uncover it.

While we do not know yet whether we will find anything like the level of illegal practices that have been uncovered in the U.S., we cannot assume that our mutual fund industry is lily-white. For example, although there are procedures in place through FundServ that mean orders cannot be entered after four p.m., the question that needs to be answered … on behalf of all investors … is this: Were all policies and procedures fully and fairly followed? In many ways, the question we're asking of mutual fund managers is age-old. "Who guards the guardians?"

It's quite possible, for example, that trouble could ensue from what might be called systemic issues. After all, mutual fund managers are basically on the "sell" side of the market. Their compensation depends upon generating fees and adding to total assets under management. As a result, selling more fund units is in the best interests of fund managers. But selling more units may not always be in the best interests of the investor who has handed over her retirement savings. We need to ensure that whenever there is even the slightest whiff of a conflict of interest, it must be the investors' long-term interests, not the short-term gain of the fund manager, that is served.

This structural conflict of interest is the focus of the governance proposal from the Canadian Securities Administrators that is currently out for comment. Known officially as Proposed Instrument 81-107, the topic under discussion is an Independent Review Committee for mutual funds. This committee will bring us closer to implementing a mandatory fund governance scheme designed to manage these potential conflicts of interest. Under the Proposed Rule, each mutual fund manager would

Fair Dealing Model Concept Paper Details) continued from page 1

information - at the account opening stage, at the time of transactions, and in their account statements. Advisers would have clearer conduct standards to guide their activities. And ultimately, we should see fewer disputes."

"Ontario does not intend to implement the Fair Dealing Model without the participation of other regulators," said OSC Chair David Brown. "Changes as fundamental as these can best succeed with the cooperation and expertise of the other Canadian securities commissions and self-regulatory organizations. We have been encouraged by their responses to date, and hope they will play an increasing role in the ongoing development of the model."

Copies of the Fair Dealing Model Concept Paper can be ordered through the OSC Contact Centre, or downloaded from www.fairdealingmodel.ca, or the OSC's website at **www.osc.gov.on.ca**.

Comments must be submitted in writing on or before Friday, April 30, 2004.

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be required to establish an Independent Review Committee for its funds. The committee's specific mandate would be to review all matters involving a conflict of interest between the fund's own commercial and business interests on the one hand, and its fiduciary duty on the other.

As a result of public comment previously received, the current Proposed Rule is much narrower than the original concept. I believe this revised approach properly focuses on areas where the Investment Review Committee can add significant value. The Committee is but one step that could take us forward to our goal … restored trust.

We have the Proposed Rule very much in mind as we move into the final phase of our own probe. In so doing, we are carrying out the OSC's two-part mandate, which is worth repeating in this context:

- first, to provide protection to investors from unfair, improper or fraudulent practices;
- and second, to foster fair and efficient capital markets and confidence in their integrity.

As for the OSC probe, obviously I can't say just yet what the precise findings will be because we are not yet finished. When our on-site investigations are complete we will take appropriate action. I can promise you that we will be prudent about what we do. As a regulator, I'm not planning to advocate new rules just for the sake of being busy. Nor am I much interested in what I would call bureaucratic interventionism. In this regard, I take my cue from Mies van der Rohe, the architect of the Toronto-Dominion Centre, whose motto was "Less is more." At the same time, however, I am a realist and an activist. As you are well aware, the OSC has recently taken tough measures on several other fronts that come under our jurisdiction. For example, we have established an enviable record in enforcement. We have obtained jail sentences in four of the most recent five cases where we have sought jail terms. We've cut the average time it takes to complete investigations almost in half, from twenty months to eleven months. As for bringing cases to trial, we've done even better; we've reduced the time involved from fourteen months to six months. In the past few years we've successfully prosecuted more than one hundred separate actions and most of those actions have involved multiple respondents.

We continue to look at ways to improve enforcement, to communicate what we're doing, to achieve tougher sanctions on securities violations and to try to bring together all the different agencies that are involved.

The next step we take will almost certainly involve stewardship. As you know, issues relating to stewardship used to be the purview of the Toronto Stock Exchange but those guidelines are now the responsibility of the OSC. To my mind, the most important aspect of stewardship is the integrity of the CEO and the culture of integrity that is created. The OSC can set the standards and create the environment but it is up to you and other business leaders to establish the appropriate tone at the top. If you fail to follow through with vision, we will act with a vengeance. We have the muscle and manpower as well as the necessary apparatus in the form of continuous disclosure requirements.

We have obtained jail sentences in four of the most recent five cases where we have sought jail terms.

It was Marshall McLuhan who said, "The important thing in business is to know what business you're in." By that definition, I believe that you and I are in the same business, the business of building and maintaining public trust. Our aligned interests include investor confidence, transparency in all dealings, fair and efficient capital markets and … but above all … trust and integrity. Those great goals are all about human values. All we regulators can do is set the standards, promulgate a few rules and punish offenders. But you have a responsibility, too, and that role means that you must pay more heed to your fiduciary duties than you do to sales and marketing. Mutual fund managers and boards of directors must constantly keep in mind the best interests of investors, not your own interests or the benefit of a select few. If you can make investors grow rich, you will also prosper. It's when the order gets reversed or the investor gets forgotten, that the industry falls down. After all, managing other people's money is a public trust, not some private prize.

I'd like to think that markets operate in the best interests of everyone, and for the most part, they do. But I am not so naïve as to believe that we don't need rules and watchdogs. The integrity of our capital markets is too important to be left entirely to self-policing by participants. No one suffers more than you do when there's wrongdoing in your midst.

With your help, we can and we will re-establish public trust in financial markets.

With your help, we can and we will ensure fairness and sound ethical practices.

With your help, we can and we will give investors every reason to believe that they are in good hands again.

Thank you. I look forward to your questions.

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ONTARIO SECURITIES COMMISSION
Volume 7, Issue 3

PERSPECTIVES

SUMMER 2004

inside...

Mutual Fund Probe Moves Into Phase Three

The OSC announced that joint Compliance and Enforcement teams will begin Phase Three of a probe into potential market timing and late trading abuses by conducting on-site reviews of mutual fund managers identified in the second phase of the inquiry .....page 2.

OSC Elected to IOSCO Executive Committee

In May, 2004, the OSC was elected for a two-year term to the Executive Committee of the International Organization of Securities Commissions (IOSCO) .....page 3.

Regulators Confirm Importance of STP to Canada's Capital Markets

On April 16, 2004, the CSA issued a discussion paper seeking comment on proposed regulatory approaches to facilitate the industry's STP objectives.....page 4.

A Cooperative Approach to Fighting Economic Crime

In a recent speech, David Brown, Q.C., Chair of the Ontario Securities Commission, discussed domestic and global enforcement efforts in combating economic crime and fraud .....page 7.

FEATURE

OSC Probes Information Management Practices

The OSC is reviewing certain information management practices that have come to its attention. The conduct at issue concerns the responsibilities of investment dealers, institutional salespersons and portfolio managers for the management of information provided during the course of marketing a private placement of securities prior to general disclosure of the private placement.

(continued on page 8)

INDEX

Perspectives welcomes comments. Comments should be sent to the Ontario Securities Commission, Perspectives, 20 Queen St. West, Toronto ON M5H 3S8. Emails can be forwarded to perspectives@osc.gov.on.ca

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets. Copies of Notices and other documents referenced below are available on the Commission's website at www.osc.gov.on.ca.

Approach Mini-Tenders With Caution

The Ontario Securities Commission, concerned that investors might be selling stock at below-market price based on misleading information, reminds investors to carefully review any offer for their shares. Firms or individuals (offerors) who seek to buy shares at below-market price should warn shareholders that the offer price is below the market price and clearly calculate the final price to be paid for the shares. In addition, they should describe investors' right to withdraw from the offer, known as a mini-tender.

What are the risks? You may misunderstand the offer and feel pressured to sell the shares at the offer price, or not realize that the offer price is lower than what you could get by selling the shares on the open market. Offerors that rely on such misunderstandings may be violating the anti-fraud provisions of securities law.

The offerors can terminate their offer at any time, delay payment for the shares, and change the offer. They may decide not to buy the shares at the last minute. Mini-tenders usually benefit the offerors at the expense of investors.

If you suspect a scam, call the Ontario Securities Commission at 1-877-785-1555. Learn more about investment fraud and other investment topics on-line at **www.investorED.ca.**

OSC Teams Begin On-Site Visits As Mutual Fund Probe Moves Into Phase Three

On May 10, 2004, the OSC announced that joint Compliance and Enforcement teams would begin Phase Three of a probe into potential market timing and late trading abuses by conducting on-site reviews of certain mutual fund managers identified in the second phase of the inquiry. The reviews, which will take place over the next few months, follow an analysis of procedures and raw data requested by the Commission from 31 fund managers earlier this year. Based on the findings from the initial visits, teams could conduct site reviews of as many as half of the list of 31.

"Right now, we're following up on preliminary indicators identified in the first two phases of our inquiry," OSC Chair David Brown said. "Once Phase Three is completed, we'll take any regulatory action - including enforcement proceedings – that may be necessary to reaffirm investors' trust in the mutual fund industry."

OSC to Review Risk Assessment Questionnaire for Advisers and Fund Managers

In a follow-up to a review conducted in 2002, the OSC has requested information from advisers and fund managers on their structure and their business operations to evaluate the potential impact on investors from a risk perspective. The online questionnaire is seeking details that will enhance the risk assessment model used by OSC staff to focus compliance field reviews in the most effective and efficient manner.

A similar questionnaire was circulated in 2002, and contributed to the ongoing development of the compliance risk assessment model. "Now that we have used the risk assessment model for over a year, we are able to better understand where it could be improved, and how we can streamline our information-gathering process," said Marrianne Bridge, Manager of Compliance at the OSC. "Information from our market participants will help us to continue to focus the model so it provides top-notch guidance in our day-to-day compliance activities."

The risk criteria are designed to identify and target the most likely instances of non-compliance with securities laws. Advisers and fund managers were asked to complete the online risk assessment questionnaire by May 28, 2004.

OSC Warns of Risks Involved in Playing the FOREX Market

The OSC is warning the public that currency trading and foreign exchange trading, also known as FOREX or FX trading, is for those that can afford to take the risk - and may be fraudulent. The Commission notes that the inexperienced public may be solicited through newspapers, radio, television and the Internet to trade currency, buy software or to sign up for trading courses. The ads promise that these programs will make you a winner, but the fine print provides a more accurate picture of what you can more likely expect.

The following tips will help you protect your money:

Check the fine print in the ads. Often it's a better prospect for investment tips than the software or seminar itself. If you suspect a scam, call the Ontario Securities Commission at 1-877-785-1555. You can learn more about investment fraud and other investment topics on-line at **www.investorED.ca.**

INTERNATIONAL REPORTS

An overview of OSC activities with international organizations to improve the regulation of financial services throughout the world.

OSC Elected to IOSCO Executive Committee

The Ontario Securities Commission was elected to the Executive Committee of the International Organization of Securities Commissions (IOSCO) at the 29th Annual IOSCO Conference held in Amman, Jordan from May 17 to May 20. The OSC's term is for two years. The OSC will be represented on the Executive Committee by Commission Chair David Brown, who is a Past Chair of IOSCO's Technical Committee.

The Executive Committee is the governing body of IOSCO responsible for achieving the organization's objectives. It has two working sub-committees, the Technical Committee and the Emerging Markets Committee. The OSC has long been a member of, and will continue to participate in, the Technical Committee, which brings together regulators from fourteen of the larger, more developed and internationalized securities markets.

IOSCO Adopts Principles on Client Identification and Beneficial Ownership for the Securities Industry

Securities regulators have a strong interest in ensuring that securities firms employ appropriate "client due diligence" processes to verify the identity of their clients and the underlying beneficial owners of client accounts, learn about and monitor their clients' circumstances and investment objectives, and maintain appropriate records regarding this information. Effective client due diligence processes facilitate investor protection, inhibit securities fraud and market abuse and reduce the risk that securities markets will be used to advance illegal activities, such as money laundering.

OSC staff participated in an IOSCO Task Force that developed a statement of *Principles on Client Identification and Beneficial Ownership for the Securities Industry*. IOSCO's full membership recently endorsed this Statement of Principles at its Annual Meeting in Amman. The Statement sets eight high-level principles, as well as providing more detailed guidance and recommendations.

This Statement of Principles can be downloaded from IOSCO's on-line Library at **www.iosco.org** (Public Document #167).

IOSCO Issues Report on Transparency of Corporate Bond Markets

To address issues relating to the evolution of corporate bond markets, IOSCO's Technical Committee has published a report on *Transparency of Corporate Bond Markets*. The report reviews trading methodologies, transparency arrangements and regulatory frameworks for corporate bonds in sixteen capital markets in the Americas (including Ontario and Quebec), Europe and the Asia-Pacific Region. It also compares differences in transparency arrangements in these jurisdictions and assesses the principal issues that arise in respect of corporate bond market transparency.

The report also proposes five core measures directed at the implementation of a key IOSCO objective that regulation should promote transparency of trading. These recommendations focus on the characteristics of the bond market, implementation of trade or transaction reports, implementation of information gathering and surveillance systems, and an assessment of the level of transparency to facilitate price discovery and market integrity.

This report can be downloaded from IOSCO's on-line Library at **www.iosco.org** (Public Document #168).

IOSCO to Conduct Survey on Auditor Oversight

In October 2003, IOSCO published Statements of Principles on *Auditor Oversight* and *Auditor Independence*. These documents can be downloaded from IOSCO's on-line Library at **www.iosco.org** (Public Document Nos. 133 and 134).

IOSCO has asked its Technical and Emerging Market Committees to follow up on these initiatives by conducting a comprehensive survey on existing practices and the legal frameworks for auditor oversight and auditor independence. Commission staff will be participating in the preparation of this survey and progress report. IOSCO intends to prepare a progress report on implementation of these principles and share the results of its survey with the Financial Stability Forum later this year.

International Joint Forum Issues Report on Financial Risk Disclosures

In April 2001, a working group (the Fisher II Group) established by the International Joint Forum (IJF) and the Committee on the *Global Financial System* of the G-10 Central Banks published a report recommending that banks, insurance companies and securities firms provide enhanced public disclosure about the financial risks to which they are exposed. These recommendations were intended to facilitate market discipline, by providing market participants with more information about the decisions that financial firms make about risk and return. The recommendations covered: (1) market risk in firms' trading activities; (2) firm-wide exposure to market risk; (3) funding liquidity risk; (4) credit risk; and (5) insurance risk.

In 2002, the IJF established a working group on enhanced disclosure to assess the extent to which the Fisher II Group's recommendations have been implemented by major firms in the larger, more developed financial markets (including Canada). OSC staff participated in the working group.

The working group's findings are summarized in the IJF's recent report, *Financial Disclosure in the Banking, Insurance and Securities Sectors: Issues and Analysis*. The working group found that, while many firms have adopted some of the recommendations, some recommendations have not been fully adopted by a significant number of firms.

The report also summarizes recent initiatives by regulators and standard-setters to enhance financial risk disclosures and identifies three areas where further work should be carried out to identify ways in which enhanced disclosures can be provided to the public. These are: (1) disclosure of risk concentrations; (2) measures of potential future exposure; and (3) funding liquidity risk.

This report can be downloaded from IOSCO's on-line Library at **www.iosco.org** (Public Document #166).

For more information about these and other international initiatives, please contact **Janet Holmes**, Manager, International Affairs, (416) 593 8282, **jholmes@osc.gov.on.ca**.

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For More Information, contact Louisa at 416 593-8053 or visit the OSC website at **www.osc.gov.on.ca**

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The CSA, a council of the 13 securities regulators of Canada's provinces and territories, coordinates and harmonizes regulation for the Canadian capital markets.

Securities Regulators Propose Uniform Securities Transfer Act

The CSA's Uniform Securities Transfer Act Task Force has released for public comment a revised consultative draft of a proposed provincial Uniform Securities Transfer Act (USTA). The USTA project is unrelated to the CSA's Uniform Securities Legislation project. The proposed USTA is not securities regulatory law, but is commercial property-transfer law, governing the transfer and holding of securities and interests in securities. The USTA requires conforming amendments to the common-law provincial Personal Property Security Acts that govern the use of securities as loan collateral. It also replaces securities settlement rules currently contained in provincial Business Corporations Acts.

The Task Force welcomes comments until July 30, 2004 on any aspect of the draft USTA and related material, and most specifically on the issues summarized in the Consultation Paper (under Part 3, B.). The proposed USTA is available on-line at **www.osc.gov.on.ca**.

Regulators Confirm Importance of STP to Canada's Capital Markets and Propose Mandating Same-Day Matching of Institutional Trades

Achieving industry-wide straight-through processing (STP) is important to maintaining the global competitiveness of the Canadian capital markets, say the CSA in a discussion paper released for comment April 16, 2004. In the paper, the CSA voice concerns about whether the securities industry in Canada is sufficiently prepared to reach industry-wide STP at the same time as the U.S. industry's STP implementation, scheduled for June 2005. The paper outlines key issues and seeks comment on proposed regulatory approaches to facilitate the industry's STP objectives.

In particular, the CSA propose to mandate a requirement that institutional trades be matched as soon as practicable after a trade is executed, but no later than the close of business on the day of the trade. The CSA paper is published together with a proposed *National Instrument 24-101 - Post-Trade Matching and Settlement, a related Companion Policy and a Request for Comment Notice.*

The comment period will expire on July 16, 2004. The documents are available on the OSC's Web site at **www.osc.gov.on.ca**.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission. Copies of Notices of Hearing, Statements of Allegations, Reasons for Decisions and Orders referenced below are available on the Commission's website at www.osc.gov.on.ca.

OSC Releases Decision in the Matter of RS Inc. Decision on Credit Suisse First Boston

On June 25, 2004, the OSC released a decision today in the application by Credit Suisse First Boston (CSFB) to set aside a decision of Market Regulation Services Inc (RS) that had ordered the removal of Stikeman Elliott LLP as counsel to CSFB. The application was denied.

The Commission further found that the end of the solicitor-client relationship as such does not end the fiduciary duty prohibiting a lawyer from acting disloyally. The Commission agreed with the RS hearing panel that Stikeman Elliott was not prevented from acting against RS in general, but that Stikeman Elliott could not, in acting for CSFB, attack the very legal advice that it had previously provided to the TSE.

The Commission agreed with the Hearing Panel that removal was necessary to preserve public confidence in the administration of justice. The failure to so order would be viewed by the public as a failure to uphold the principle that "justice should not only be done but should be seen to be done."

OSC Approves Settlement Agreements in the Matter of Paradigm Capital Inc., Patrick McCarthy and Eden Rahim

At a hearing held June 11, 2004, the OSC approved settlement agreements between staff of the Commission and Paradigm Capital Inc., Patrick McCarthy and Eden Rahim. In the settlement agreement, parties agreed that the conduct of each of the respondents was contrary to the public interest. Paradigm was found to have failed to properly supervise and restrict the activities of McCarthy. McCarthy and Rahim were found to have participated in a transaction that resulted in shares being sold by persons who had knowledge of a material fact which had not been generally disclosed, to persons who had no knowledge of that fact.

The panel of Commissioners ordered that:

- Paradigm implement a revised policy with respect to the receipt of confidential material information while acting as an agent on behalf of an issuer; be reprimanded; make a settlement payment of $55,755; pay $30,000 in respect of the costs of the investigation and the proceeding;
- McCarthy take the Canadian Securities Course on Securities Law and Regulations; be reprimanded; pay $30,000 in respect of the costs of the investigation and the proceeding; and that certain terms and conditions be placed on his registration;
- Rahim be reprimanded; pay $30,000 in respect of the costs of the investigation and the proceeding, and that certain terms and conditions be placed on his registration.

OSC Issues Reasons for Sanctions Against Patrick Lett, Milehouse Investment Management Limited and Pierrepont Trading Inc.

The OSC issued reasons for sanctions June 9, 2004, in the matter of Patrick Fraser Kenyon Pierrepont Lett, Milehouse Investment Management Limited and Pierrepont Trading Inc. After considering submissions, the Commission issued sanctions on May 7, 2004 with reasons to follow.

The sanctions are:

- Milehouse and Pierrepont will cease trading in securities for 15 years;
- Lett will cease trading in securities for 10 years, subject to certain conditions;
- Lett will resign from any positions he holds as director or officer of any reporting issuer or registrant and is prohibited from any such position for 15 years;
- Lett is reprimanded; and
- Lett will pay the costs of staff's investigation and the hearing in the amount of $150,000.

OSC Charges Defendants in the Discovery Biotech Inc. Matter

On June 2, 2004, a proceeding was commenced with the consent of the OSC in the Ontario Court, General Division, pursuant to S. 122 of the *Ontario Securities Act* against Discovery Biotech Inc. (Discovery) and Orest Lozynsky, Robert Vandenberg and Howard Rash.

Discovery and the three individuals are charged with trading in shares of Discovery without being registered to trade in securities, trading in securities of Discovery without having filed a prospectus with the OSC, and making certain prohibited representations respecting the future value of the securities and the listing of Discovery securities on a stock exchange. These acts are in violation of the Ontario *Securities Act*.

In addition, Lozynsky, Vandenberg and Rash, being directors and officers of Discovery, are charged with authorizing, permitting or acquiescing in the commission of the offences under the *Securities Act* noted above. The first appearance in this matter was held on July 6, 2004 at Old City Hall, 60 Queen Street West, Toronto, Ontario.

OSC Commences Prosecution and Commission Proceeding Against former Senior Managers of Atlas Cold Storage Income Trust

The Ontario Securities Commission has initiated a quasi-criminal prosecution against Patrick Gouveia, Andrew Peters, Ronald Perryman and Paul Vickery. These four individuals were former members of senior management at Atlas Cold Storage Holdings Inc. (Holdings), the operating entity of Atlas Cold Storage Income Trust (Atlas). Gouveia was the former Chief Executive Officer and a Director of Holdings. Peters was the Chief Financial Officer. Perryman was the Vice-President, Finance. Vickery was the Controller and latterly the Director of Business Controls.

The Commission has laid two charges that Gouveia, Peters, Perryman and Vickery violated section 122(1)(b) of the *Securities Act* personally and two further charges that they violated section 122(3) as directors or officers who authorized, permitted or acquiesced in the commission of an offence in relation to the filing of materially misleading annual financial statements by Atlas in 2001 and 2002.

The Commission also laid two charges that Gouveia, Peters and Perryman violated section 122(1)(b) personally and two further charges that they violated section 122(3) as directors or officers who authorized, permitted or acquiesced in the commission of an offence in relation to the filing of materially misleading financial statements by Atlas for the first two reporting periods of 2003.

The Commission has also issued a Notice of Hearing and staff of the Commission have filed a Statement of Allegations with the Commission against the four individuals in relation to the filing of misleading financial statements as alleged in the quasi-criminal charges.

The first appearance in the Ontario Court of Justice on the quasi-criminal charges was July 7, 2004 and the first appearance date on the Commission proceedings was July 9, 2004.

OSC Issues Management Cease Trade Orders Against Certain Insiders of Argus Corporation Limited

On June 3, 2004, a panel of Commissioners of the OSC made a final order prohibiting certain directors, officers and insiders of Argus Corporation Limited from trading in securities of Argus, subject to certain exceptions contained in the order. The prohibition will remain in force until two business days following the receipt by the Commission of all filings, including financial statements, that Argus is required to make pursuant to Ontario securities law.

The Commission made this order under paragraph 2 of subsection 127(1) of the *Securities Act*. The order has the effect of continuing the temporary order of the Director that was made on May 25, 2004.

OSC Issues Management Cease Trade Orders Against Certain Insiders of Hollinger Companies

Following a hearing held on June 1, 2004, a panel of Commissioners of the Ontario Securities Commission made three final orders under paragraph 2 of subsection 127(1) of the *Securities Act*. Subject to certain exceptions contained i the orders, all trading in securities of each of the thre companies noted below by the directors, officers and insider named in the orders shall cease until two full business day following the receipt by the Commission of all filing including financial statements, that each company is require to make pursuant to Ontario securities law:

- Hollinger Inc.
- Hollinger International Inc.
- Hollinger Canadian Newspapers, Limited Partnership

These orders continue the temporary orders made by th Director on May 18, 2004 respecting Hollinger Inc. an Hollinger International Inc., and on May 21, 2004 respectin Hollinger Canadian Newspapers, Limited Partnership.

OSC Commissioners Continue Management Ceas Trade Order Against Nortel Insiders

Following a hearing held on May 31, 2004, a panel of OS Commissioners made a final order under paragraph 2 subsection 127(1) of the *Securities Act* that all trading b certain directors, officers and insiders of Nortel Networl Corporation and Nortel Networks Limited in securities Nortel Networks Corporation and Nortel Networks Limite cease until two full business days following the receipt by th Commission of all filings, including financial statements, th corporations are required to make pursuant to Ontari securities law. This order continues the temporary ord made by the Director on May 17, 2004.

Ontario Securities Commission Approves th Settlement between Staff and Michael Hersey in th Saxton Matter

On May 26, 2004, the Ontario Securities Commissio approved the settlement between Staff of the Commission an Michael Hersey. Hersey has never been registered with th Commission. During the material time, Hersey was a license insurance agent.

Over three and a half years, Hersey participated in thre illegal distributions, and engaged in unregistered trading securities. Between 1995 and 1998, various Saxton compani issued securities. The sale of such securities raise approximately $37 million from investors. The distributio of the Saxton securities did not comply with Ontari securities law. Between April 1995 and April 1996, Hersey so in excess of $2 million worth of the Saxton securities to ov 30 Ontario investors. Among other things, Hersey misrepresented the nature and quality of the Saxton securiti to his clients.

Between May and September 1998, Hersey sold Susse International securities to his clients. The distribution of th Sussex International securities did not comply with Ontari securities law.

The Commission settlement hearing panel issued a 20 ye cease trade order against Hersey (with the exception certain trading in Hersey's personal accounts after five years Hersey is prohibited from becoming or acting as an offic or a director of any issuer for 20 years.

R. v. Felderhof

Counsel appeared before Judge Hyrn on April 19, 2004 to set the trial date in the proceedings against John Felderhof. The trial will resume on December 6, 2004 for two weeks. It is expected that the trial will continue on February 28, 2005.

RECENT SPEECH

Excerpts from an address by David A. Brown, Q.C. Chair of the Ontario Securities Commission, to Pricewaterhouse Coopers, May 27, 2004.

A Cooperative Approach to Fighting Economic Crime

Some might say that economic crime and fraud is nothing terribly new. The issue is getting more attention than ever because of a recognition of its seriousness, and because it poses a greater challenge than ever. Companies have become more complex, and complexity lends itself to manipulation. Resources are at a greater premium, leading to the understaffing of internal audit functions. But fraud is a hard line-item to control; its secretive nature precludes any meaningful estimate of its actual cost and frustrates efforts at controlling it.

Internal controls are the most widely accepted means to detect fraud and prevent it. But in most cases of fraud, there *was* an internal control in place – one that should have prevented or detected the fraud, but didn't. And, as the PriceWaterhouseCoopers survey of 3600 companies in 50 countries last year pointed out, "even when companies have control systems to detect economic crime, these can often be rendered ineffective by management override or collusion."

There is one other major factor that has made more companies vulnerable to fraud – the connected economy. Information becomes more readily available and borders become less of a real barrier.

The PWC crime survey last year found that economic crime is a broad threat. In fact, 37 per cent of respondents report significant economic crimes over the previous two years. And according to the survey, no industry seems to be safe. It found that size is no defense – in fact, it just makes for a bigger target. Companies with more employees are more likely to have suffered from economic crime.

And it found that the impact on a company goes beyond the immediate financial cost. The real cost of fraud is not so easy to tally. It includes damaged reputation, diminished trust, and the related impact on morale and brand. As the PWC report pointed out: "The damage inflicted by economic crime goes far beyond direct monetary loss. Intangible assets, including business relationships, staff morale, reputation and branding are critical to any business. These can all be undermined by the occurrence or even the perception of fraud."

I hope the sponsors of this conference won't mind if I also include some information from a competitor of theirs, Ernst&Young. Just think of it as equal time. The E&Y report also found that corporate fraud is broadly based. More than two-thirds of companies report having been victims, and fraud was not concentrated in any one geographic region.

The good news is that for the first time in 16 years of surveying on this topic, a majority of organizations indicate they have formal fraud prevention policies in place – compared to only a third that had policies in place two years ago.

The growth of economic crime may have continued unabated, except for two factors: 9-11 and Enron. 9-11 made it crucial for authorities around the world to facilitate the gathering and sharing of data about the movement of money. Enron put the issue of corporate integrity in the window. U.S. Federal Reserve Board Chairman Alan Greenspan has characterized Enron as a "tragedy," but one that "probably has created a positive set of forces to improve corporate governance." For regulators and other authorities dealing with this issue, it is now easier to focus attention on the problem, easier to achieve cooperation, and easier to obtain resources.

Last month, I attended a meeting of the International Organization of Securities Commissions, known as IOSCO, to address the issue of Parmalat – the Italian food giant that imploded in scandal late last year, causing billions of dollars of share value to evaporate into thin air. The IOSCO meeting was an example of the newfound spirit of global cooperation in countering corporate crime, fraud and money-laundering.

There are many benefits to globalization, but there's also a darker underside. Large-scale crime is as globalized as big business and it doesn't stop at borders. Enforcement can't stop at borders either. 9-11 made that clear, if there was any doubt before. World leaders have started looking at ways in which terrorism and global crime are financed and ways in which money is laundered by these organized groups.

And regulators have started to make the process of international cooperation in fraud cases work a lot faster than the creaky model we are used to. Let me give you an example. In an enforcement case that we were conducting recently, we needed to obtain information from the Bahamas, Liechtenstein, Luxembourg and Switzerland, all of which have secrecy laws. We were getting shut out. In time, we started to make some breakthroughs. Eventually, we got the information we needed to track transactions right through those jurisdictions. What made the difference? I'd like to think it was through the brilliance in our presentation to these authorities. But, in fact, what happened was a drive toward global cooperation on enforcement that stemmed from September 11th.

The response to 9-11 included blacklists of secretive, uncooperative jurisdictions. The Financial Action Task Force, set up by OECD countries, very quickly came out with such a list. Not much later, the Financial Stability Forum, which is a forum formed by the G-7 financial ministers, came up with a list of offshore jurisdictions.

IOSCO, which includes 115 securities commissions, also began to identify uncooperative countries. Countries started to react, and react very swiftly. There was almost an unprecedented cooperation from the so-called "secrecy

jurisdictions." Since then, many have dramatically reduced their secrecy laws and other impediments to cooperation.

So there are now fewer countries where illegal money can be moved around secretly and for the perpetrators to hide their identity. In fact, someone who is looking for one of these havens may well have to pause. Today's secrecy jurisdiction may be tomorrow's show-and-tell jurisdiction.

The response to 9-11 included something else that is vital to combating economic crime – a Multi-lateral Memorandum of Understanding on cooperation and enforcement, negotiated among all of the securities commissions. What is the real value of this? Look at it this way: Put together all of the securities commissions' enforcement arms in countries around the world, and that adds up to a formidable force of securities enforcement agencies. In fact, there's probably not another group like it around the world.

There are now 26 jurisdictions that have applied to participate and been accepted. Ontario and Quebec were two of the first signatories, and B.C. and Alberta have now been accepted as well. To their embarrassment, a number of countries, including some major countries, couldn't fit the bill. We've created a separate category for them – nations that want to be part of this initiative and have pledged to get their laws changed.

Given our efforts, how is Canada perceived internationally regarding enforcement? Last year, in examining our regulatory structure, the Wise Persons' Committee visited the U.S., the U.K., the European common market and Australia. They heard consistently that, looking at Canada as a whole, tougher enforcement of our securities laws is needed.

We have made significant strides in improving our enforcement efforts over the past few years. In fact, the OSC has obtained jail sentences in four of the last five cases in which we have sought a jail term.

In the past four years, we've successfully initiated proceedings or settled more than 100 separate actions. Bear in mind, most of those actions involve multiple respondents, as many as 24. This translates into an effective record of enforcement.

We've been able to cut our average time to complete investigations from 21 months to 13 months. And in bringing cases to trial and actually prosecuting them, we've cut our average time by more than 25 per cent, from an average of 15 months to 11 months.

So there has been progress. But there is no denying that enforcement can still be significantly improved.

Look at the lack of vertical integration. In many locations — like Toronto — we have three levels of police force: the RCMP, the provincial police, and the Metropolitan police. Then, there is the provincial Attorney-General and the OSC. Look at the lack of horizontal integration, with separate operations by 13 provinces and territories — and a federal presence as well.

Working in sync, these agencies would constitute a phenomenal force. We need to bring the groups together and to establish a clearer responsibility and a clearer authority for all concerned. It is important to knit the enforcement community into a much more unified whole.

Potentially, our resources are enormous. Potentially, we can make it tougher than ever for fraudsters to operate in Canada. Now is the time to turn potential into reality, and raise the level of protection and enforcement to the heights that the current challenge demands.

Thank you.

(OSC Probes Information Management Practices) continued from page 1

"Currently, we are conducting a review of over 300 private placements and special warrant offerings reported to the TSX and are identifying a number of potential *Securities Act* violations similar to the activity identified in this matter. Market participants who are aware of improper trading activity associated with private placements or special warrants offerings may wish to avoid a full investigation by coming forward now and receiving credit for their cooperation," said Michael Watson, OSC Director of Enforcement. "We will be following up on our review with all appropriate action."

Sanctions have been issued against one company and two individuals in the first case heard by the Commission on such a matter. Staff of the OSC expects to bring a number of similar cases before the Commission in the near future.

Perspectives is published quarterly by the Communications Branch of the Ontario Securities Commission.

To be included on the mailing list for *Perspectives*, please contact us at:

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ONTARIO SECURITIES COMMISSION

PERSPECTIVES

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Inside...

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David Wilson Nominated as New OSC Chair

The Minister responsible for the Ontario Securities Commission (OSC), Gerry Phillips, announced on June 22, 2005, that David Wilson has been nominated as the new Chair of the OSC. The announcement was made shortly before David Brown retired on June 30, after more than seven years of distinguished service as OSC Chair.

Mr. Wilson, currently Vice-Chair of Scotiabank, and Chair and Chief Executive Officer of Scotia Capital in Toronto, has worked in the securities industry for more than three decades, and has extensive experience as an investment banker and senior manager. His primary responsibility at Scotia Capital is for the overall management of the firm's corporate and investment banking activities worldwide. He has advised the Ontario government on its work toward the establishment of a common securities regulator in Canada.

Cont'd page 8

Investors Speak Up at Town Hall Meeting

On May 31, 2005, OSC Chair David Brown invited consumers of financial services and industry regulators to join him in dialogue and debate over the current investor complaint and arbitration system. The Town Hall was an opportunity for the 420 investors in attendance to share their experiences with the regulatory system and the industry.

Brown was joined by fellow colleagues Joseph Oliver, President & CEO, Investment Dealers Association of Canada; Michael Lauber, Ombudsman & CEO, Ombudsman for Banking Services and Investments; Mutual Fund Dealers Association President & CEO Larry Waite; and Small Investor Protection Association President Stan Buell.

Cont'd page 8

ONTARIO SECURITIES COMMISSION REPORTS

An overview of regulatory activities in Ontario that have an impact on capital markets. Copies of Rules and Regulations, Notices of Hearings, Statements of Allegations, Reasons for Decisions and Orders referenced below are available on the Commission's website (www.osc.gov.on.ca).

Proposed Principal Regulator System Does Not Achieve Meaningful Reform

In a release on May 27, 2005, the OSC stated it is unable to support a new principal regulator system developed by the CSA because it endorses the idea of different regulatory standards for market participants depending on where their head office is located, undermining the CSA harmonization efforts that the OSC continues to strongly support.

While the OSC has worked with other CSA members to come up with a system that would further harmonize and simplify Canada's regulatory regime, the Commission believes the current proposal falls short of this objective.

The proposed system is not based on a single securities code — instead, it permits market participants to comply with different laws based on the location of their head office and, for the first time, would allow regulators to export these different standards into other jurisdictions. The OSC believes this creates inefficiency, an unlevel playing field and will result in increased complexity and confusion for market participants.

The OSC has published its position on the principal regulator system (proposed Multilateral Instrument 11-101 Principal Regulator System) on its website (www.osc.gov.on.ca) and invites public comment. Comments can be submitted up to July 27, 2005.

The OSC strongly supports a parallel and related CSA initiative to streamline and improve the existing Mutual Reliance Review System (MRRS). The notice explaining the OSC's position on the principal regulator system also requests public comment on an OSC proposal to amend, in conjunction with other CSA members, a number of MRRS policies and instruments that will introduce further harmonization and streamlining in its existing review processes.

McMaster University Confers Honorary Degree upon OSC Chair David Brown

OSC Chair David Brown received an honorary Doctor of Laws degree from McMaster University, in recognition of his distinguished public service in the field of securities regulation on the provincial, national and international stages.

Brown also addressed the students of McMaster's DeGroote School of Business who received undergraduate or graduate degrees, including those from the MBA and Ph.D. programs, during the convocation ceremony on June 6, 2005.

The honorary degree recognized Brown's leadership of substantial regulatory developments at a key time for capital markets in Canada and internationally. Over the past seven years, Brown has made important contributions as a senior member of the Canadian Securities Administrators (CSA), which co-ordinates securities policy across the country. He has played an integral role in numerous CSA initiatives, including the development of new investor confidence rules and the ongoing effort to harmonize and streamline the securities regulatory system in Canada.

Brown has made it a priority of the OSC to foster international regulatory cooperation. He is the past Chair of the principal policy-setting body of the International Organization of Securities Commissions (IOSCO), and represented the OSC on the organization's Executive Committee.

Webcast on Investment Fund Continuous Disclosure

The Investment Funds Branch of the OSC has produced a webcast about a new CSA rule which sets out the continuous disclosure requirements for all investment funds. The webcast explains some key requirements of National Instrument 81-106 Investment Fund Continuous Disclosure (NI 81-106), which is accompanied by Companion Policy 81-106CP.

The purpose of NI 81-106 is to harmonize continuous disclosure requirements among jurisdictions in Canada and to consolidate requirements currently found in legislation, various rules and policies into one rule. The Rule applies to all types of investment funds, including mutual funds, non-redeemable investment funds, labour sponsored funds and scholarship plans.

The webcast is accessible on the OSC website (www.osc.gov.on.ca) in the Investment Funds section, under 'Speeches and Presentations', and in the Rules, Polices & Notices section, under 81-106, in the 'Mutual Funds' category.

The OSC webcast was written for market participants in Ontario, although stakeholders in other jurisdictions may find the content informative.

Concept Paper on Market Structure Rules Released

Securities Commissions in five Canadian jurisdictions issued a concept paper in June to address issues relating to the structure of Canada's evolving capital markets. The paper, by securities commissions in Alberta, British Columbia, Manitoba, Ontario and Quebec, addresses issues relating to executing orders at the best price available in any marketplace in Canada, often referred to as the "trade-through" rule. A 90-day comment period follows the June paper, with a proposed solution to be in place by the fall.

The current regime in Canada set out in the Universal Market Integrity Rules (UMIR) places obligations on dealers when

they are acting as agents for both best execution and best price. Market Regulation Services Inc. (RS) has approached the five provincial regulators to consider immediately implementing a rule aimed at reducing potential trade-throughs by institutional investors. A trade-through occurs when a trade is executed at a price that is inferior to the best available price. Current regulation in the UMIR places a best-price obligation on participants, therefore preventing trades "through" the best available price.

The five regulators do not believe that implementation without public comment is appropriate at this time, especially in the absence of lack of evidence of harm to investors in maintaining the status quo while stakeholders' input is gathered. In light of the complexity and importance of the issue, the five regulators believe it is important to have a full and transparent debate before any changes are made.

The core issues that the concept paper addresses include the scope of the trade-through obligation and the flexibility available to traders, whether it applies to dealers or institutional investors, and whether factors such as speed of execution should be put ahead of price consideration. These issues are becoming increasingly important as Canada's market matures and large block trades become more common in our marketplaces.

INTERNATIONAL REPORTS

An overview of OSC activities with international organizations to improve the regulation of financial services throughout the world.

IOSCO Publishes Action Plan to Strengthen Capital Markets against Financial Fraud

In the past few years, several well-known companies with significant international operations have become mired in financial scandal. Collectively, these scandals have caused many people to be concerned about investors' confidence in the integrity of global capital markets.

Consequently, IOSCO's Technical Committee established a high-level Chairmen's Task Force and asked it to inquire into the regulatory issues exposed by these scandals, identify any broad trends and assess the extent to which existing international standards and current initiatives by international standard setters like IOSCO address these regulatory issues and trends.

The Task Force identified several areas that have figured prominently in many of the recent financial scandals, such as corporate governance, disclosure requirements for issuers, bond market regulation and transparency, and the roles of market intermediaries and information analysts.

The Technical Committee used the Task Force's comprehensive analysis to develop a prioritized action plan for further work to rectify the most pressing concerns. In March 2005, the Technical Committee published this action plan in its report, *Strengthening Capital Markets against Financial Fraud*. This report, which identifies weaknesses in the global regulatory system and establishes priorities for future IOSCO work accordingly, constitutes the blueprint for IOSCO's future.

By promoting implementation and enforcement-related cooperation, IOSCO believes that it can significantly enhance the effectiveness of the international infrastructure supporting securities markets by adopting policies that emphasize existing IOSCO standards and principles, ensuring a benchmark for all IOSCO members with respect to enforcement related cooperation, and prioritizing jurisdictions that pose the most significant threat to the global financial system.

Initiative to Improve Cross-Border Cooperation among IOSCO Members

As financial markets become increasingly global, cross-border cooperation among securities regulators to combat fraud, market abuse and money laundering has become an increasingly important objective for securities regulators. IOSCO has been looking at problems of cross-border cooperation for a number of years and has been developing international standards and tools to facilitate cooperation.

One of IOSCO's most significant achievements was the endorsement by its Presidents' Committee in 2002 of a comprehensive, multilateral memorandum of understanding (IOSCO MMOU) designed to enhance the ability of securities regulators around the world to cooperate and share enforcement-related information.

To date, 27 IOSCO members (including the Ontario Securities Commission, the Alberta Securities Commission, the British Columbia Securities Commission and the Autorité de Marchés Financiers du Québec) have voluntarily completed the exhaustive screening process and been accepted as full signatories, while an additional five securities regulators have completed the screening process and formally committed to seek the necessary changes to their laws to enable them to become signatories within a reasonable time frame.

In response to recent scandals, IOSCO announced in February 2005 that it is embarking on an initiative to raise standards of cross-border cooperation among securities regulators, including those located in offshore financial centres (OFCs). This initiative will consist of a four-part process that will involve prioritizing jurisdictions that appear unable or unwilling to cooperate, and working with the jurisdictions that pose the greatest risk to achieve cooperation and conformity in the areas of investor protection, maintenance of fair and efficient markets and financial stability.

XXXth Annual IOSCO Conference Held in Sri Lanka

In April 2005, representatives of the OSC attended IOSCO's Annual Conference in Colombo, Sri Lanka. This year's conference, hosted by the Securities and Exchange Commission of Sri Lanka, attracted more than 400 delegates from more than 100 jurisdictions.

During the public conference, outgoing OSC Chair David Brown chaired a panel that considered recent developments relating to the governance and oversight of credit rating agencies.

During the proceedings open only to IOSCO members, the Presidents' Committee (comprising all voting IOSCO members) voted to accept Market Regulation Services Inc. and the Bourse de Montréal as new Affiliate members.

IOSCO members also endorsed an important set of strategic initiatives for IOSCO. Among other things, IOSCO members adopted a timetable providing for all member regulators who have not already been accepted as signatories to IOSCO's multi-lateral memorandum of understanding on enforcement-related cooperation to meet this benchmark by January 1, 2010. IOSCO members also committed additional resources to facilitate implementation of IOSCO's *Objectives and Principles of Securities Regulation* across IOSCO's entire membership and adopted a Consultation Policy for IOSCO initiatives.

The full text of IOSCO's press release can be viewed online at www.osc.gov.on.ca. Questions can be emailed to: mail@oicv.iosco.org.

CANADIAN SECURITIES ADMINISTRATORS REPORTS

The CSA is a council of the securities regulators of Canada's provinces and territories whose objectives are to improve, coordinate and harmonize regulation of the Canadian capital markets.

Investor Protection Focus of Revised Investment Fund Governance Rule

The CSA have published for second comment a revised version of a proposed rule on the governance of investment funds, originally published in 2004, that focuses on enhancing investor protection.

The proposed rule would impose a minimum, consistent standard of governance for all publicly offered investment funds. Currently, there is no requirement that investment funds have a governance body.

Under the proposal, every publicly offered investment fund must have an Independent Review Committee (IRC) to oversee a fund manager's decisions in situations where they are faced with a conflict of interest. These conflicts would include "business" or "operational" conflicts that are not specifically regulated today, as well as related-party transactions, which are currently restricted.

The revised rule applies to all publicly offered investment funds. While existing rules and prohibitions on related-party and self-dealing transactions would be retained, the new rule differs in a number of significant ways.

The text of the proposed instrument, National Instrument 81-107 Independent Review Committee for Investment Funds, and related amendments, is available on several CSA members' websites. CSA members will accept public comments on the proposal until August 25, 2005.

Election of CSA Chair and Vice-Chair

Mr. Jean St-Gelais, President and CEO of the Autorité des Marchés Financiers du Québec and Mr. Donald Murray, Chair of the Manitoba Securities Commission, were named CSA Chair and Vice-Chair, respectively, for two year terms starting on April 1, 2005. They have replaced Mr. Stephen P. Sibold, former Chair of the Alberta Securities Commission, and Mr. Donne W. Smith, Chair of the New Brunswick Securities Commission, whose two year terms expired.

Regulators Implement National Registration System and Registration Reform Website

In April 2005, the CSA launched the National Registration System (NRS), making important improvements to the registration regime of individuals and firms by harmonizing, streamlining and modernizing the process across all Canadian jurisdictions.

Under the system, an applicant will be required to meet the "fit and proper" standards of only the principal regulator. This will improve the registration process by applying principles of mutual reliance to reduce unnecessary duplication in the analysis and review of registration applications of investment dealers, mutual fund dealers, unrestricted advisers (investment counsel/portfolio managers) and their sponsored individuals.

The NRS is part of the Registration Reform Project (RRP), an ongoing CSA initiative to harmonize the registration regime. The Registration Reform Project has consulted extensively with industry stakeholders on its objectives, which include developing registration categories and common proficiency and conduct requirements. Stakeholders will have the opportunity to participate in additional consultations to discuss other important registration issues as the project seeks to achieve its various objectives. Three industry representatives sit on the project's steering committee, along with representatives of the IDA, MFDA, and securities regulators in British Columbia, Alberta, Ontario and Quebec.

On June 8, 2005, the CSA launched the RRP website (www.rrp-info.ca) in support of the harmonization initiative. The website provides market participants with updated content

about the RRP, including news, events, forms, and FAQ's about various elements of the RRP, including NRS. Additional content will be added to the website, when appropriate, as the RRP moves forward.

ENFORCEMENT REPORTS

The following are summaries of recent enforcement proceedings and hearings before the Ontario Securities Commission. Copies of Notices of Hearing, Statements of Allegations, Reasons for Decisions and Orders referenced below are available on the Commission's website (www.osc.gov.on.ca).

Settlement Concerning Miller Bernstein & Partners LLP Approved by Commission

On May 20, 2005, the OSC approved a settlement agreement between Staff of the Commission and Miller Bernstein & Partners LLP.

The OSC Staff had alleged that Buckingham Securities Corporation, a securities dealer, made misleading or untrue statements in financial reports for fiscal years 1999 and 2000, required to be filed with the OSC. Staff further alleged that Miller Bernstein & Partners LLP, the auditors of Buckingham, had engaged in conduct contrary to the public interest in relation to the audit opinions of Miller Bernstein.

In the settlement agreement approved by the OSC, Miller Bernstein admitted to conduct contrary to the public interest, acknowledging it had stated that its examination was made in accordance with generally accepted auditing standards, and in the light of the circumstances under which they were made, misleading or untrue, did not state a fact that was required. Miller Bernstein further admitted that it did not obtain sufficient audit evidence and did not formulate appropriate procedures to support the opinions expressed in the 1999 and 2000 reports.

As set out in the terms of the settlement agreement, Miller Bernstein agreed to sanctions that include a settlement payment in the amount of $75,000, a payment of $115,000 in respect of a portion of the costs of the investigation, and a reprimand by the Commission in relation to the firm's conduct.

Miller Bernstein also agreed not to provide auditing or other services to reporting issuers or to registrants under Ontario securities law.

Norman Frydrych Settlement Approved

The OSC approved a settlement agreement between Staff of the Commission and Norman Frydrych on May 20, 2005.

The proceeding concerned allegations that Buckingham Securities Corporation, a securities dealer, had failed to segregate fully paid or excess margin securities owned by its clients, failed to maintain adequate capital at all times and failed to keep such books and records in violation of requirements of Ontario securities law. Frydrych made admissions that he acted as an officer of Buckingham, that he had authorized, permitted or acquiesced in Buckingham's violations of the requirements of Ontario securities law outlined above, and that his conduct was contrary to the public interest.

The sanctions ordered by the Commission include termination of Frydrych's registration under Ontario securities law, a permanent prohibition against Frydrych from becoming or acting as a director or officer of any reporting issuer, any registrant or any issuer that directly or indirectly has any interest in any registrant, and an order that Frydrych cease trading in securities for a period of 15 years, with the exception of personal accounts in his name in which he has sole beneficial interest, and in registered retirement savings plans in which he has sole beneficial interest.

Norshield Registration Suspended

On May 20, 2005, the OSC issued Temporary Orders suspending the registration of Norshield Asset Management (Canada) Ltd. (Norshield) and imposing terms and conditions of the registration of Norshield and Olympus United Group Inc. (Olympus).

The registration of Olympus was suspended on May 13, 2005, because Olympus was operating without a registered trading and compliance officer. Olympus had not sought registration for a trading adviser on Ontario nor had it designated a compliance officer. Olympus therefore did not meet the registration requirements that would enable it to trade on behalf of its Ontario clients.

Since May 16, 2005, the OSC, the Autorité des Marchés Financiers and the Mutual Fund Dealers Association have been conducting a coordinated review of the operations of Norshield and Olympus in Quebec and Ontario. During the review, Norshield and Olympus have been unable or unwilling to adequately explain the investment structure offered to clients nor have they provided an adequate explanation as to the flow and location of client funds.

On June 29, 2005, RSM Richter Inc. was appointed receiver for Norshield Asset Management (Canada) Ltd. and several related companies including Olympus United Funds Corporation, by order of the court in Ontario. The Autorité des marchés financiers obtained a similar court order in Quebec on June 30.

Temporary Orders Extended Against Portus And Manor

The OSC issued an Order on May 16, 2005 adjourning the hearing to consider whether the temporary orders issued on February 2 and 10, 2005 against Portus Alternative Asset Management Inc. and Boaz Manor should be extended, until September 16, 2005. On consent, the Commission continued the Temporary Orders pending the hearing on September 16, 2005.

Settlement With Zoran Popovic and DXStorm.Com Inc. Approved Over Failure To File Insider Trading Reports

At an OSC hearing on May 10, 2005, a settlement agreement between Staff of the Commission, Zoran Popovic and DXStorm.Com Inc. was approved. Zoran Popovic agreed that on 95 occasions in 2002, he failed to file insider trading reports as required by section 107(2) of the Ontario *Securities Act*.

In approving the settlement agreement in the public interest, the Commission panel reprimanded Popovic, and ordered Popovic to personally pay $5,500 towards the cost of the investigation and the proceeding. The Commission also ordered DXStorm.Com Inc. to implement a Code of Conduct including an Insider Trading and Reporting Policy.

Prosecution against Emilia von Anhalt and Jurgen von Anhalt Commenced

OSC staff have initiated a quasi-criminal prosecution against Emilia von Anhalt and Jurgen von Anhalt, former directors, officers and majority shareholders of Lydia Diamond Exploration of Canada.

On May 5, 2005, an Information was sworn that contained 39 counts against Emilia von Anhalt and 27 counts against Emilia von Anhalt and Jurgen von Anhalt jointly.

Staff allege that in 2002 and 2003 Emilia von Anhalt made oral representations that securities of Lydia would be listed on an exchange and gave an oral undertaking relating to the future value of Lydia securities, with an intention to effect a sale of those securities. Staff also alleged that since November 19, 2002, Emelia and Jurgen traded Lydia securities while unregistered to trade in securities; traded securities of Lydia without a prospectus; and violated the terms of a Commission Order by trading securities of Lydia, acting as a director and officer of Lydia, and failing to resign as a director or officer of an issuer.

In the Matter of Agnico-Eagle Mines Limited

A Commission panel approved a settlement agreement between Staff of the Commission and Agnico-Eagle Mines on April 28, 2005. Staff allege that on two occasions, Agnico-Eagle failed to forthwith disclose material changes in its affairs, and on one occasion, issued an inaccurate news release.

Agnico-Eagle agreed to initiate a review of its disclosure and reporting practices and procedures by an independent third party, acceptable to both Agnico-Eagle and Staff, at the expense of Agnico-Eagle, and will implement any recommendations made by the independent third party referred to above that are approved by Staff, within a reasonable period as approved by Staff.

Simplified Process Settlement with Andrew Cheung Approved

A settlement agreement between staff of the Commission and Andrew Cheung was approved on April 26, 2005. Cheung agreed that on 21 occasions between November 2003 and October 2004, he failed to file reports as required by section 107(2) of the Ontario *Securities Act*. The trades were executed by Global Genius Investments Ltd., a company beneficially owned by Cheung.

In approving a settlement agreement in the public interest, the Commission panel issued an order that Cheung pay an administrative penalty of $5,000, and pay $3,500 towards the cost of the investigation and the proceeding.

The case against Cheung was the first in which the Commission has imposed an administrative penalty on an individual, under new powers that were granted to the Commission in April 2003.

Permanent Trading Ban Imposed on Foreign Capital Corp., Montpellier Group Inc. and Pierre Alfred Montpellier

The OSC released its reasons for decision in the matter of Foreign Capital Corp., Montpellier Group Inc. and Pierre Alfred Montpellier on April 18, 2005.

On April 14, 2004, Pierre Montpellier pled guilty to fraud and theft contrary to the *Criminal Code* of Canada. Specifically, he agreed that he had defrauded 128 investors in Foreign Capital Corporation of $5,347,300 by falsely representing that funds would be invested in private placement programs.

Describing actions as "conspicuously offensive", the Commission found that "Montpellier's egregious conduct goes to the very essence of the duties and responsibilities of a registrant under the Act. His contravention of obligations under the Act is illustrative of a most grave type of failure by a registrant". The Commission concluded that Montpellier's "disregard of the foreseeable consequences of his conduct to marketplace participants and his monetary greed, convinced us that if we do not restrain Montpellier properly, confidence in our markets would be weakened".

The order issued by the Commission panel specifies that Montpellier's registration be terminated, and that trading in any securities by Foreign Capital Corporation, Montpellier Group Inc. and Montpellier cease permanently. Montpellier is also required to resign from all positions that he holds as director or officer of an issuer, and prohibited from becoming or acting as a director or officer of any issuer.

Settlement with Jo-Anne Chang and David Stone Approved by Commission

At a hearing held on April 11, 2005, a panel of Commissioners approved a settlement reached between Staff of the OSC and the Respondents Jo-Anne Chang and David Stone.

The settlement is in relation to allegations made by the OSC against Chang and Stone. In the settlement agreement, the respondents admit Chang had access to material information that had not been generally disclosed, which was communicated to Stone, her husband, prior to May 10, 2000. At the time, Chang was director of investor relations at ATI Technologies Inc. Between May 10 and May 19, 2000, Stone purchased 1,000 put options in ATI, for a total cost of $311,180.20 in advance of a news release issued May 24, 2000, announcing that ATI would fail to meet revenue and sales expectations for 2000.

RECENT SPEECH

Excerpts from an address by David Brown, Q.C., to the Toronto CFA Society, May 10, 2005.

The investment industry is globalizing. Jurisdiction has traditionally been based on geography, but in a 24-hour by 7-day era of open financial borders and real-time communication, there is one market — the world.

Today, the Ontario investing industry is not competing with B.C. and Alberta. It is competing with the U.S. and Europe. We have to look at issues through that prism — the impact they have on our ability to fare in international competition.

That's why we have invested significant time in the International Organization of Securities Commission, or IOSCO. And that's the best way to describe it — an investment. It is important to make sure that the interests of Ontario market participants are represented globally. It's important for Ontario to have the best practices internationally.

The changing realities we deal with also demand that we work more closely with other national securities regulators, particularly the SEC. When the U.S. passed Sarbanes-Oxley, for example, it was important for us to get a handle on its impact on the Canadian market. For one thing, meeting the disclosure standards of U.S. securities laws is an important factor in maintaining continued U.S. participation in the Multi-jurisdictional Disclosure System, or MJDS. That's very valuable to Canadian companies, because it allows them to file the same disclosure documents with the SEC that they already file in Canada. That means significant savings for companies that require frequent access to U.S. capital markets.

We have recently seen a change in the makeup of the investing community. About half of all adult Canadians are invested in equity markets, through pension funds, mutual funds, or direct retail investments.

Meanwhile, investment products are becoming more diverse, more sophisticated, and more complex. This can create regulatory challenges. More and more mutual fund dealers with restricted licences and a lower standard of proficiency are selling more and more complicated products.

Many investment tools that used to be available only to the very wealthy are now available to average investors; for example, the increasing popularity of alternative investment funds. When formerly elite investment instruments become more widely available, the industry has to take a good, hard look at them to determine their suitability for the average investor. We also have to make sure that the industry is clear on its responsibilities. That brings me to Portus.

Approximately $750 million worth of complex products were sold to about 26,000 retail investors. That's a broad investor base when you consider the nature of the products. And it's a complex investment. In fact, the complexity of the foreign intermediaries involved in international aspects of the transactions — and the lack of regulatory compliance by Portus — has made it difficult for investigators to understand this product after months of forensic accounting. So what could have accounted for the firm's tremendous sales record? Perhaps there is only one particular feature to speak of — high up front fees and trailer fees for referrals. The potential earnings for agents were high.

There may well be some issues to address in relation to the manufacturers of some of these investment products. But the responsibilities of the intermediaries involved are clear. They are professionals with a duty to understand the products involved and the risks entailed. They have a responsibility under the *suitability* provision. They have a responsibility under *fairness* obligations. They have a responsibility to put their clients' interests ahead of their own.

These issues are being probed in the enforcement case, but the industry has a black mark on it — and it has to start looking very hard at itself to ensure that it doesn't become an indelible stain. One must be wary of the danger that the market is perceived only to make money for advisors, not investors. We need to continue to pursue the twin objectives of protecting investors, while serving as a facilitator of investment — not a barrier to it. We need to continue to focus on international competition, and aggressively and effectively represent Ontario's interests in shaping best global practices. We need to continue to take unnecessary complexity out of regulation. We need to try to eliminate the duplication and overlap between provinces — reducing hurdles as much as possible.

In that regard, we need to continue to pursue a goal of the Ontario Government — creation of a single securities regulator for Canada. The process of bringing Canada together on securities regulatory policy is lengthy, expensive and often frustrating.

We must continue to encourage the development of a culture of compliance among investment firms and companies. That's a matter of complying with not just the letter but also the spirit of the rules, and a sustained effort — not a sporadic one.

Finally, I just want to say that when it comes to the OSC's future ability to pursue its goals, I am extremely confident. The level of public awareness of regulatory issues is higher than I have ever seen it. The OSC has the strength and depth to address the issues, the cooperative links with other agencies to pursue enforcement, and the international awareness and involvement to ensure our place in global regulation.

We can protect investors while ensuring robust markets. We can improve structures for compliance without putting up barriers to growth. We need markets to be efficient *and* fair; we have demonstrated that we can pursue both simultaneously. Thank you.

FEATURE

OSC Chair Announcement, continued from page 1

"I am pleased that Mr. Wilson has agreed to lend his talent and expertise to this important role," said Mr. Phillips in statement. "He will have the challenge of leading this key regulatory agency in a complex and fast-changing environment."

If the Standing Committee of Government Agencies concurs with this nomination, Mr. Wilson's appointment would take effect on November 1, 2005, following his retirement from Scotia Capital. In the interim, OSC Vice-Chair Susan Wolburgh Jenah will serve as acting Chair, as chosen by the Commission.

Mr. Wilson is an excellent leader who is well placed to guide the OSC through the challenges of regulating the province's capital markets over the next five years, said Mr. Brown, following the announcement of the nomination.

"The OSC is indeed fortunate to have someone with the experience and expertise of David Wilson willing to lead the Commission at such a dynamic time for capital markets," he said in a statement. "I welcome the nomination of David Wilson as incoming Chair and am confident that he is the right person to lead the Commission forward."

Born in Toronto, Mr. Wilson, 60, graduated with a Bachelor of Commerce degree from the University of Toronto and an M.B.A. from York University. In 1971, he joined the corporate finance department of McLeod Young Weir Limited, a predecessor firm to Scotia Capital, having previously been an investment research analyst.

After holding a variety of management positions in the corporate finance area of the firm, Mr. Wilson was appointed Chair and Chief Executive Officer of Scotia Capital Markets in January 1998. In November 1999, he became Co-Chairman and Co-Chief Executive Officer of Scotia Capital, which is the marketing name for the corporate and investment banking businesses of the Bank of Nova Scotia.

In May 2002, Mr. Wilson was appointed Vice-Chair of the Bank of Nova Scotia and became Chair and Chief Executive Officer of Scotia Capital.

In addition, he is past Chairman of the Investment Dealers Association of Canada, and was a member of the Five Year Review Committee that reviewed the Securities Act of Ontario.

"I look forward to Mr. Wilson's contribution to ensuring Ontario's capital markets are strong and healthy and have the confidence of investors and publicly traded companies alike," said Minister Phillips.

"I'd also like to thank David Brown for seven years of exemplary leadership and public service both domestically and internationally, and wish him all the best in his future endeavours," said Mr. Phillips.

Investors Speak Up at Town Hall Meeting, continued from page 1

Facing a number of regulatory bodies and a fragmented system, consumers of financial services often become overwhelmed by the process of seeking satisfactory resolution to their complaints. Citing a strong record for the OSC in protecting investors on issues like corporate governance, accounting and financial disclosure, Brown acknowledged that, in the past, sufficient emphasis had not been placed on protecting the investor as a consumer of financial services.

Prompted by the growing number of complaints, coupled with the issues raised by Brown at the Standing Committee on Finance and Economic Affairs (SCFEA) at the Ontario Legislature in late 2004, the OSC established the Investor Town Hall to create a public forum to link investors and their issues with the regulatory bodies. The SCFEA hearings and subsequent report released underscored the need to design and implement a workable mechanism to allow investors to purse restitution in a way that is both timely and affordable.

The Town Hall was a first step in identifying gaps in the system. Listening to first hand experiences generated valuable input regarding ways the system can be improved. The event achieved a number of objectives, bringing together those individuals the OSC is mandated to protect and those who share that regulatory responsibility. It served as a reminder of the wide range of issues the regulators face, and the challenges to be overcome, to pursue consumer protection in financial services.

Many of the questions raised were too complex to yield immediate initiatives, so the OSC has issued a report on the key findings, making recommendations in an effort to maintain the momentum of a public dialogue on the matter. The report is available on the OSC website: www.osc.gov.on.ca.